REPORT

OF THE

TRANSVAAL CONCESSIONS COMMISSION,

Dated 19th April 1901.

Part II.

MINUTES OF EVIDENCE.

Presented to both Houses of Parliament by Command of His Majesty.
JUNE 1901.

By K.27

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The first three days' evidence was heard at Capetown; the next thirteen at Pretoria; and the last five in London.

MINUTES OF EVIDENCE.

FIRST DAY.

LIBRARY BUILDINGS, CAPE TOWN.

Monday, 1st October, 1900.

PRESENT:

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

SIR A. M. ASHMORE, C.M.G.

Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*

The *Chairman* began the proceedings by reading the Notice of the High Commissioner, as follows:—

HIGH COMMISSIONER'S NOTICE.

No. 9 of 1900.

Notice is hereby given that every Concession granted by the Government of the late South African Republic will be considered by Her Majesty's Government on its merits, and Her Majesty's Government reserves the right to decline to recognise or to modify any Concession which may appear, on examination, not to have been within the power of the Government of the late South African Republic, having regard to any Conventions or Agreements made between Her Majesty's Government and the Government of the late South African Republic, or to have been granted without proper legal authority, or contrary to law, or the conditions of which have not been duly complied with, or which may appear to affect prejudicially the interests of the public.

By order of the High Commissioner,

F. PERRY,
Acting Imperial Secretary.

Government House, Cape Town,
8th September, 1900.

The *Chairman* then read the following notices given by the Commission, viz. (1):—

The Commissioners appointed to inquire into the Concessions granted by the Government of the late South African Republic hereby give notice that they will, in the first instance, inquire into the following Concessions, viz.:—

1. Any Concession conferring the sole and exclusive right of manufacturing, importing or dealing in any commodity in the Transvaal.

2. Any contract made with the Government of the late South African Republic under the scheme approved by the Volksraad Resolution No. 1871 of November, 1896.

3. Any Concession to the National Bank or to any other Bank or Banking Institution.

4. Any Concession or Contract for the construction or working of any railway or public tramway, or the public supply of water or light.

The first sitting of the Commission will be held on October 1st, 1900. Notice will subsequently be given of the place of its sitting. All persons desiring to be heard should communicate with the Commission before the above date. Communications must be addressed to the Secretary, Transvaal Concessions Commission, Library Buildings, Cape Town.

Concessionaires should send to the Secretary statements of any evidence which they desire to give, and will be required to produce the documents on which they rely, translated into English, and notarially certified, in triplicate. Oct. 1 00

Notice of objections to any Concession should also be sent to the Secretary together with short statements of any evidence which it is desired to submit.

By order of the Transvaal Concessions Commission.

BERNARD HOLLAND,
Secretary to the Commission.

Cape Town,
8th Sept., 1900.

and (2):—

With reference to the Notice of the 8th September, 1900, published in the "Cape of Good Hope Government Gazette Extraordinary" of that date, the Transvaal Concessions Commission hereby give notice that their first sitting will be held at the Library Buildings, Cape Town, at 10.30 a.m. on the 1st October next and subsequent days, and that sittings will be held at the Government Offices at Pretoria on the 10th October and subsequent days.

In order to facilitate the arrangement of business and to enable the Commission to meet as far as possible the convenience of persons interested, the Commissioners require that the statement of evidence and documents referred to in the notice of 8th September, 1900, be placed in the hands of the secretary to the Commission on or before the 26th instant.

By order of the Transvaal Concessions Commission.

BERNARD HOLLAND,
Secretary to the Commission.

Cape Town,
19th Sept., 1900.

The Chairman said: Under ordinary circumstances the Commission would have opened in Pretoria, but the Commissioners, knowing that there were a considerable number of gentlemen down here interested in these Concessions, and being as desirous as possible to accommodate those who were able to attend our sittings in Cape Town, especially seeing that the attendance of many of them at Pretoria would have involved great inconvenience, have set aside three or four days in order that witnesses of that character might be accommodated. The notices which I have read show, generally, the nature of the business before the Commission. But I think it is well to point out that in each case the burden is upon the parties claiming the benefits of Concessions to show that the Concessions were within the power of the Government of the late South African Republic to grant, having regard to Conventions

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1 Oct. 1900.

or Agreements made between the late South African Republic and Her Majesty's Government. In the second place, it will be necessary for all those claiming Concessions to show that they were granted lawfully and with proper legal authority, and in the third place to show that the conditions of the Concessions have been duly complied with; and lastly, to show that the interests of the public are not prejudicially affected by them. As a general rule, subject of course to modifications, the holder of a Concession and his witnesses will, in the first instance, be examined. Objectors to a Concession will then be invited to give their evidence. The proceedings are not in the nature of a litigation between parties, but of an inquiry, the conduct and regulation of which is under the control of the Commissioners. Inasmuch, however, as the pecuniary interests of Concessionaires are closely involved, the Commissioners will permit them if they so desire it to be represented by counsel, and similar permission has been granted to the Chamber of Mines, whose constituents are closely affected by the inquiry. It is desirable to repeat that any person who wishes to give evidence as to any objections to a Concession independently of the Chamber of Mines, should send in a statement of such evidence to the Commissioners, who will then call and examine those persons if their evidence, in the opinion of the Commissioners, is material to the inquiry. In general the procedure of the inquiry will be as follows:—The Commissioners will examine the witnesses, and counsel will, where necessary, further examine or cross-examine them; and at the close of each case the Commissioners will intimate if they desire to hear counsel on any point of law arising thereon. That in general will be the procedure adopted, subject to the modifications which the circumstances of each case will demand.

(*Mr. MacIntyre*, Attorney.) In your opening remarks you quote the word "Counsel," does that cover Attorneys as well?

(*Chairman.*) I think we may say it does.

(*Mr. C. T. Thompson*, Attorney.) I should like to know, sir, what are the powers of the Commission, and further with regard to persons holding Concessions who, owing to their absence from the country, are unable to produce their Concessions—how their position will be affected?

(*Chairman.*) So far as the power of the Commission is concerned, it is appointed by Her Majesty's Government, through the Secretary of State for the Colonies, to inquire into these Concessions in terms of the notice which I have read. Any person who fails to appear before the Commission, and to satisfy it as to his Concession, will do so at his peril.

(*Mr. Thompson.*) I understand the function of the Commisioners is only to inquire into these Concessions, and to report to the Colonial Office?

(*Chairman.*) That is so.

(*Mr. Thompson.*) There is also this further question: difficulties may arise as to witnesses who may decline to attend. For instance, I appear for one or two Concessions, and we may want to obtain evidence other than that of our own officials. The Commission may be considered to have no legal power to compel the attendance of such witnesses.

(*Chairman.*) I think we must deal with each case as it appears before us, but with regard to the attendance of witnesses I do not anticipate that any difficulty will occur.

(*Mr. Thompson.*) Then, also, there is this question, I may say, of extraordinary importance, and I merely suggest it, so as to save as much time as possible in Pretoria; that is with respect to the position of the Commission and its power to deal with the Concessions themselves, whether any legal argument with regard to the position of Her Majesty's Government is to take place before the Commission, and a note made of the argument, or whether it will be dealt with at home afterwards; because it may be advisable not to recognise the power of the Commission or of Her Majesty's Government to deal with any concession. In certain cases it may be my duty to take objection as to the validity of any action by the Commission, except as to the taking of information, and also as to the validity of Her Majesty's Government to finally deal with those matters, pending the constitution of a proper legal tribunal.

(*Chairman.*) We are all agreed that this Commission has not the power to cancel any Concession itself. It has merely to make an enquiry and report to Her Majesty's Government. We should be glad to consider any objections or observations which may be submitted as to the power of Her Majesty's Government, if I understand that to be the point, to cancel these Concessions.

(*Mr. Thompson.*) That is what I suggest. I take up a very strong point with regard to the power of Her Majesty's Government in this respect.

(*Chairman.*) Any such argument ought to be addressed to us in the first instance, and we shall report upon it to the Government. Every opportunity will given to submit objections in law by those representing the Concessionaires.

Mr. Seward Brice, Q.C., suggested that the notice read by the chairman at the opening of the proceedings should not only be printed in the press, but that printed copies of it should be available to the persons interested, as it would in one sense be considered a direction of the Court of Commission.

The Chairman promised that the statement he had made at the beginning of the proceedings on behalf of himself and colleagues would be published in the local press.

(*Mr. Brice.*) I wish to know if the Industrial Scheme of 1896, issued in November of that year, can be obtained through the Commission, as so many people are interested in it. There is no copy obtainable outside the Commission. Cape Town seems so interested in Transvaal affairs that it does not appear to have a copy of the statutes.

(*Chairman.*) With regard to the question as to Concessionaires who cannot appear, if anyone representing them here shows that it is impossible for them to put in an appearance, attention will be given to that. There do not appear to be many matters which it is possible for us to deal with down here. Such communications as we have had deal with cases with reference to which we are informed that it was impossible to consider their merits here, on the ground that the great mass of documents are in Pretoria or Johannesburg; but we are in a position to begin the case of what is known as the Albert's Kroon Steam Tramway. Mr. Kentish Moore is interested in that Concession.

(*Mr. C. T. Thompson.*) In that matter I sent in the papers on behalf of Mr. Kentish Moore, although I am not acting for him. His own solicitor will appear before the Commission at Pretoria, and he intends to go up to Johannesburg to give evidence.

(*Chairman.*) Notice was given that Mr. Kentish Moore would be present to-day.

The Chairman then asked if anybody was present representing a Concession to make bricks.

There was no response.

The Chairman then asked if anyone was present representing the Concessionaires of the Government entrepôt.

(*Mr. MacIntyre.*) I represent the Pretoria entrepôt.

(*Mr. Advocate Curlewis.*) I appear on behalf of the Chamber of Mines to oppose that Concession.

(*Mr. MacIntyre.*) Mr. Romyn, the Concessionaire of the Pretoria entrepôt, is here prepared to give evidence, and I now put in a translation of the original document. I have not the original in my possession; it is in Pretoria, but this copy is certified notarially.

THE PRETORIA ENTREPÔT OR BONDED WAREHOUSE CONCESSION

Mr. ANTON CHRISTIAAN ROMYN, called; and Examined.

Mr. A. C. Romyn.

1 Oct. 1900.

1. (*Chairman.*) You are the assignee of this concession?—Yes.

2. You obtained it from whom?—From the Netherlands Bank.

3. Before they assigned this concession to you, had the bank done any work in connection with the entrepôt?—Yes, they had been in existence for about ten years. Somewhere about that.

4. Did they erect buildings?—Yes.

5. Were they carrying on the business for the Government?—Yes.

6. Have you got the original concession granted to them?—Well, I do not know, but I think I must have it. It was attached to the concession.

7. What did you pay for the assignment?—I forget whether it was £100 or £200.

8. Was that all the consideration that passed between you and the Netherlands Bank?—Yes. They did not want it any more. They did not know how to work it. It was granted to a former manager of theirs, who did not conduct himself altogether well in the bank, and had to leave. Then the bank had to work it themselves, but it was not within the scope of their business to work these things, and they were only too glad to get rid of it.

9. What was the nature of the building erected?—I did not take the building over from them. The buildings belonged to Mr. Hollands. He bought the building and ground, and I bought the contract and worked it. Mr. Hollands has also the cartage contract in Pretoria, so that we could work the thing very well together.

10. Do you know what he gave for the building?—I believe £4,000 or £5,000; I cannot be sure. All these papers are in Pretoria; I have no documents here.

11. To whom does the building now belong?—To Hollands, we pay him rental for it.

12. What do you pay?—I believe it is £27 10s. per month.

13. (*Mr. Ashmore.*) The business is that of keeping a bonded store for uncustomed goods, is it not?—Yes, it is what would be called a Queen's warehouse at home. All importers who cannot afford to pay the duty on the stuff imported by them, get their goods stored in the entrepôt and release it from there every time they are in a position to pay their Customs duty. When they do so they produce their Customs receipt and I hand them over the goods.

14. (*Chairman.*) Are goods sent to the entrepôt from the ports?—All the goods that arrive in Pretoria by rail, if they are not cleared within three days, the railway authorities give notice to the consignees and the goods are sent to the entrepôt. After that the importer can have them by paying the customs and the storage. You will find in the Concession that every merchant has the right of having his own entrepôt.

15. (*Mr. Ashmore.*) Did you give security to the Government in connection with this business?—Yes. £600.

16. (*Chairman.*) Can you state what extent of business you did, the amount of goods you received?—I cannot; I did not work it myself. I have got my manager there, and the books are in Pretoria. The manager is at present working in the Castle, as he has gone over to the Imperial railway authorities; but he would not be much good without his books. He will probably be in Johannesburg, and will be able to give evidence if you want him up there.

17. (*Mr. Ashmore.*) As a matter of practice, did the other merchants keep such stores?—No, only Beckett, who has one for his paraffin. It does not pay the large merchants to put their goods in an entrepôt, as they can afford to pay the customs dues on the arrival of their consignments. The storage is very low as charged at my entrepôt, and importers only put in, as a rule, the stuff on which a high duty is payable, like liquor and cigars. They never send bulky goods to the entrepôt.

18. (*Mr. Loveday.*) You can show from your books what profit you made?—Yes.

19. (*Chairman.*) But you are not able to tell us without your books?—It is a matter of between £300 and £400.

20. (*Mr. Ashmore.*) That profit is exclusive of the rent you pay?—That is the profit on the whole concern, but it varies. Last year we made nothing.

21. (*Chairman.*) You are aware of the provision of Clause 28 of your Concession with reference to any alteration in the collections on import duties?—Oh, yes.

22. (*Mr. Ashmore.*) When this was started by the Netherlands Bank have you any idea what the Bank paid for it?—I do not think they paid anything. I pay 5 per cent. of the profits to the Government.

23. (*Mr. Loveday.*) That is nett profit?—Yes. The profit is small, but it saves the Government a lot of officers. For example, if every storekeeper on Monday morning wanted a case of liquor or cigars, and there was no entrepôt such as this, a very large extra staff of officials would have to be employed.

24. (*Mr. Ashmore.*) You consider that your contract obviates the necessity of Government having its own bonded store?—Yes.

(*Mr. MacIntyre.*) As representing the Johannesberg entrepôt, there is nothing before me to indicate on what lines Mr. Curlewis is understood to be opposing. I should like to ask if he is opposing this Concession on the ground that it involves a breach of the Convention with Her Majesty's Government?

(*Chairman.*) We have put all the questions that occurred to us at the present moment in the absence of this gentleman's books. If you wish to examine him it is in your power to do so.

Mr. MacIntyre then obtained permission to question the witness.

25-6. (*Mr. MacIntyre.*) Has your entrepôt proved a benefit to the public?—I think it has been a great benefit to the public. As a matter of fact, there has never been any complaint lodged, or any objection with respect to it raised by anyone, so far as I can remember.

27. Can you tell me whether it is contrary to any of the laws of the Transvaal?—It is granted under the existing law. The Government has a special right to grant entrepôt concessions.

(*Chairman.*) Can you refer us to the law?

(*Mr. MacIntyre.*) There is not a copy in Cape Town.

(*Mr. Loveday.*) It is the ordinary law of the late South African Republic.

28. (*Mr. MacIntyre.*) (*To Witness.*) Can you tell us if this entrepôt was largely used by the smaller merchants?—Yes, especially by these. The big merchant has a large capital to work with, and can pay his customs dues at once, but the smaller men frequently find it difficult to do so, and it is easier for them to take up part of their consignments, and leave the other part in the entrepôt until they can pay.

29. You say you have a maximum charge for storage?—Yes, a penny half-penny per cwt., but we never ask the full amount. As a rule, we charge considerably less. It depends on the time and the quantity stored.

30. According to this agreement, the Concession was granted subject to any laws subsequently passed by the Government, and any alteration in the customs dues?—Yes.

31. Then, assuming that the Transvaal Government had entered into a Customs Union, would this entrepôt have gone on?—No, it would have lapsed. A clause was put in to that effect, because at the time negotiations were proceeding between the different South African States and Colonies for a Customs Union.

32. Apparently, from this agreement, the Transvaal Government protected itself against anything like monopoly, and also protected the public, by Clauses 22 and 29, which refer to the fact that a Concession held good subject to any regulations made hereafter. You say no complaints whatever have been lodged against your Concession?—None whatever.

33. Have all the conditions been complied with in the terms of the agreement, and to the satisfaction of the Government?—Yes, the thing has always worked harmoniously with the Government.

34. You have given the necessary security in terms of the agreement?—I have.

Mr. A. C. Romyn.

1 Oct. 1900.

35. (*Mr. Ashmore.*) There is a stipulation with regard to insuring goods. Do you insure these people's goods?—No, that is a matter I have often thought over. I am not bound to insure, but I am bound to assist them if they wish to do so. I always say, when they express a desire to insure, that the insurance agent comes round, and such a matter can always be arranged.

Mr. Curlewis had no questions to ask the witness.

The *Chairman* intimated to witness that he would give notice if the Commission required to see his books.

The witness stated that such notice could be given to his partner, Mr. J. R. Dyer, Box 61, Pretoria. He added: I may state that I am a prisoner on parole here, and I shall not be able to go up for some time.

(*Chairman.*) I do not think we shall require you again. When does this Concession expire? Was it to last while the Transvaal Government remained in being?

(*Witness.*) This Concession is really an extension of an existing contract renewed for a term of ten years, beginning in July, 1897 or 1898, I am not sure which.

36. (*Chairman.*) You cannot say the exact period?—No, I think it was July, 1897 or 1898. The other contract had lapsed already when this was signed. They were not always very quick in signing such agreements, and we had to wait for six months sometimes before we could get any documents signed.

(*Mr. C. T. Thompson.*) I represent the Johannesberg entrepôt, but am in the unfortunate position of not being able to produce any evidence. The directors of the company and all the books and papers are in Johannesberg. There is only one director of the company down here, but he has only lately joined the board, and is not in a position to give any evidence, as he has no information in his possession.

(*Chairman.*) It will stand over, and it must be understood that somebody must appear from your company at Johannesburg or Pretoria.

(*Mr. Thompson.*) Certainly, sir. Such a notice given to the Secretary of the Johannesburg entrepôt will be sufficient.

(*Chairman.*) There will be no difficulty as to any Johannesburg gentlemen coming over to Pretoria to give evidence before this Commission.

(*Mr. Attorney Wahl.*) I represent the Pretoria Waterworks, the Pretoria Electric Lighting, and the Leather Concessions.

(*Chairman.*) Notice in each case will be given to the companies.

JOHANNESBURG-ALBERTSKROON TRAMWAY CONCESSION.

Mr. KENTISH MOORE, called; and Examined.

Mr. K. Moore.

37. (*Chairman.*) I think you represent an interest in the Rand known as the Steam Tram Concession?—Yes, it is a syndicate that owns it.

38. Whom do you represent?—The Express Syndicate of Johannesburg.

39. Are they the assignees now of that Concession?—Yes.

40. You are a civil engineer?—Yes.

41. Did you come out to the Rand in 1894 and interest yourself in railway matters?—Yes.

42. Did you obtain any official position in 1897?—I was doing work for the mining industry in general, constructing a certain road along the reef.

43. Did you at that time mature a scheme for coal siding accommodation between the Netherlands Railway and the mines?—I had been studying the whole problem of how to get coal in bulk supplied to the mines, and one had to come in contact with the Netherlands Railway, and I did so at that time.

44. Did you negotiate with the railway for that purpose?—A good deal of correspondence passed between the railway and myself, and I induced them to give as reasonable terms as possible. The charges they used to make were extraordinary from the point of view of anybody but themselves.

45. Did anything come of these negotiations?—They offered to be very reasonable, finally.

46. They offered to do everything they could to assist the mining industry?—Yes.

47. Did you approach the Chamber of Mines on the subject?—I forwarded a copy of some correspondence to the Chamber of Mines.

48. How did they receive your communication?—Well, things were a little strained, and the Chamber of Mines suggested that it would be much better if they were approached directly, but the position taken up by the other side, namely, the Government and the Netherlands Railway, was that they did not see their way to approach the mining industry directly, unless they were requested to deal with the subject personally; so the matter temporarily dropped.

49. What was the next you heard with regard to the Government upon this matter?—The Volksraad had passed a resolution authorising the construction of a certain tram line. I cannot refer you to the resolution, as I have no copy of it, and the solicitor of the Express Syndicate is not here. The resolution was brought to my notice some months after it had been passed by the Volksraad. It was passed in the summer of 1898, about June.

50. What was that resolution so far as you know?—I cannot quote you the *ipssisima verba*, but the substance of it was this: that, in consequence of the closing of a somewhat big brickfield which existed more or less in the middle of Johannesburg, they wished to obtain other brickfields for the brickmakers. They could not obtain anything sufficiently near the town that would not detrimentally affect the position of the brickmakers. They could not get any decent ground without going a few miles out, and the Volksraad resolution was to the effect that the tram lines should be constructed from this brickfield to some point near Albert's Kroon, as the crow flies about seven miles out. But the contour of the country was so extraordinarily difficult that the railway is pretty nearly ten miles in.

51. To whom was that Concession granted?—It was granted to somebody else and taken over by J. B. Wolmarans.

52. You have not these documents?—No, the solicitor has all the particulars. He has gone to Durban, and will be prepared to give evidence, if necessary, at Pretoria.

53. Were you approached by Wolmarans on the subject of his Concession?—Yes, he was brought to see me on the subject. I had never met him before.

54. This Concession he had for this line, was it in accordance with your previous ideas?—Partially. The Volksraad's resolution was simply a verbal resolution, and as far as I am aware there was never any plan, map, or sketch of any sort or description attached to it. Then the engineer examined this line, took a verbal description of the parishes of Johannesburg through which it passed, and it was found to be quite impossible to build such a line without running south, down what is called the Robinson Valley. It is impossible to build it at all unless you go over the mining area. The line had to be spread out a little bit in consequence of the existence of so many surface mining works.

55. Did this Concession of Wolmarans enable you to carry out your idea with regard to a coal siding?—Directly you are in the mining area you are within yards of most of the mines.

56. Then this line being granted, the Concession did enable you to put through your coal siding idea?—Such a line as that which I wished to construct ran within a few yards of any of the coal bunkers.

57. You examined this Concession, and ultimately dealt with Wolmarans?—Yes.

58. What did you give him?—£6,000.

59. (*Mr. Ashmore.*) Cash or shares?—In cash.

60. Have you a receipt for that?—I cannot produce it here now, but will do so.

61. Where is it now?—It is in Johannesburg. The preliminary agreement was between myself and him while I was forming the Express Syndicate.

62. (*Chairman.*) Had you formed the syndicate when he named his price?—I had not formed it, but I was in process of doing so.

63. Was the money ultimately paid by the syndicate to him?—Oh, yes.

64. Does the receipt purport to show the nature of the payment?—I put down what was called the option money, and the syndicate refunded it to me. That amount was £1,000, and they refunded that and paid the balance.

65. What did you receive from the syndicate for selling to them your option?—I put up some money for the syndicate, and received 3,000 shares for the work I had done to cover my engineering fees. I put into the syndicate £3,500, and they put up an equal sum, making £7,000 in all, and, as I have said, I received 3,000 shares for services rendered. They paid me nothing for the plans.

66. (*Mr. Loveday.*) You put in £3,500 in cash?—Yes, and 3,000 shares I got for my services, in lieu of engineer's fees.

67. (*Chairman.*) What was the capital of this syndicate?—Only £10,000.

68. What was the next proceeding after that?—The next proceeding was to complete the plans, which was a very difficult and a very expensive process, for the reason that the mining area was so very complicated. You had to work it out point by point with the different mines, and as you got *a*, *b*, and *c*, as you imagine, satisfactorily finished, *d* would invariably want some altering. It took the best part of two years to work that out and to get the mines to agree. I got all the plans agreed to by the different mines. I went to the firm most interested, who controlled about 80 per cent. of the mining area, Messrs. Eckstein and Co. They called meetings of their engineers in their offices, and also meetings of outside engineers connected with the various mines affected, such as the Ferreira, the Wemmer, and the Goldfields mines. They gave me letters of introduction to the mine managers to settle the routes, which I did.

69. Did you make plans according to these arrangements?—Yes, and when they were finished they gave me letters of introduction to their firm in London.

70. Are they here or in Johannesburg?—Some are in Johannesburg, but I have one or two here. With regard to the plans of the proposed system they are rather bulky, and I could not very well send them in. I have, however, here a small plan of the various routes which I am prepared to put in. (*Plan produced and submitted to Chairman.*)

Mr. Advocate Curlewis intervened and wished to know what effect this evidence would have with particular regard to this concession.

(*Chairman.*) We are at this stage: the witness is pointing out to us the nature of the Concession granted to Wolmarans under which a line was to be built from Albertskroon through Burgersdorp, Fordsburg, Vrededorp, to Johannesburg. The reason which the witness gives for the deviation of the line is the difficult nature of the country through which it had to pass. He has pointed out that it is practically impossible to go from Albertskroon to Auckland Park. I have asked him when he has got to Auckland Park by what authority he was entitled to go into the mining areas, and apparently from his evidence it was necessary that he should go by Burghersdorp and Fordsburgh to the depôt which he had decided to establish.

(*Witness.*) May I put the case from this point of view: if you had got to build a railway from Sheffield to London you have to get there the quickest way you can.

71. (*Chairman.*) I quite appreciate what you say. You cannot get from Albertskroon to Auckland Park without going round. You say there are physical obstacles which prevent you going from Auckland Park to the place at which you wish to establish your depôt without going into the mining area?—It is quite impossible to go in.

72. (*Chairman.*) But you have done it, and you could not do it except by that way?—The gradients were altogether too steep.

73. That, of course, is entirely within your knowledge, and would not be in the knowledge of the solicitor. I want to know why you commit yourself to this, that there are physical objections which an engineer could not get rid of, preventing you from going from Burghersdorp to the depôt which you proposed to establish without going into the mining area?—It is the Robinson Valley and the difficulties connected with the contour of the country. The grade was altogether too high. I cannot get a lower grade than 1 in 40. There is nothing approaching that going through Fordsburg and Burghersdorp, and the Railway Commissioner refused to allow me to take a tramway through the streets for the reason that it was not safe.

74. We shall have evidence upon this point, but what I want you to do is to give us your specific reason for tapping this district instead of going straight up?—The reason for taking that route is, first of all, the physical contour; the second reason is that we could not obviously interfere with any surface mining works. When you see the ground you will be able to appreciate the difficulties of the situation.

After consultation and perusal of the diagram with reference to the witness's estimate of the topographical extent of Johannesburg proper in 1898, and as to whether it included Burghersdorp, Vrededorp, and Fordsburg the Chairman asked:

75. Why did you put your depôt outside of the area as depicted on this plan?—Because there is no spot into which we could run a line into the middle of the town where we could get a depôt.

76. You adopted what was convenient, and looked to the contingencies and the prospects of the future instead of adhering to the Concession actually granted?—On the contrary. It is a coincidence that the one thing happened to fit in with the other.

77. The depôt was outside the place where you were authorised to go?—I could not stick to that point. I was not allowed to put a brick depôt in the middle of the street.

78. We have here, according to your plan, your line going through Burghersdorp and Fordsburg, but there are extensions contemplated?—Yes. There was what might be termed present construction and future construction.

79. Do you really call these extensions sidings? They appear to be one-third the length of the whole line?—They are really sidings.

80. (*Mr. Loveday.*) According to the Concession there must be a plan attached to it?—Yes. The Railway Commissioner did this at Pretoria.

81. (*Chairman.*) I see that on February 23rd, 1899 the detail clauses of the contract having been settled, the final contract was signed by the Railway Commissioner—Yes, with the authority of the Executive Council. I am not quite sure of the *modus operandi*. I believe the Railway Commissioner signed after the contract had been amended and passed by the Executive Council.

82. You further negotiated matters with persons interested in the mines and ultimately floated the company—Yes.

83. What was the name?—The Witwatersrand Tramway Company.

84. How about the capital?—The capital was underwritten.

85. How much?—Half a million. A quarter of a million debentures and a quarter of a million in ordinary shares.

(*Report of company put in.*)

86. You say the capital of the proposed company was £250,000 in debentures and £225,000 in ordinary shares. What did the £25,000 balance represent?—The whole of that would not have been needed immediately. The deeper level mines were not ready, and would not be ready for another two or three years.

87. The *Chairman* intimated that this report would be put in, and asked: Where were these shares underwritten?—In London.

88. (*Mr. Loveday.*) When was this company floated—I went to London in June, 1899. I was back in Pretoria in August or possibly about July.

89. (*Chairman.*) Have you got a list of the underwriters?—No.

90-91. Can you get it?—I do not know if I can without referring to London; at least, I am sure I cannot.

Mr. Advocate Curlewis suggested that the Chairman should ask the question, Whether the owners of any of the mines assisted in the underwriting at all?

92. (*Chairman.*) (*To Witness.*) Did the owners of any of the mines on the Rand underwrite these shares or the debentures?—Mr. Eckstein had every opportunity of doing anything he chose to do. He informed me that he did not think an 8 per cent. railway proposition was worth

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putting his money into. I quite agree with him. They had every opportunity of underwriting if they chose to do so, but they represented to me in effect that they had something better to do with their money.

93. As a matter of fact, can you tell us if any Rand mine owners underwrote this capital?—No, none of them did so.

94. You never asked them?—Oh, no, that is quite true.

95. Have you a copy of the Concession there?—Yes.

96. I see from this Concession that before commencing construction the trust deed is to be approved by the Railway Commissioner, after the establishment of a company with limited liability?—Yes, after arrangement for the establishment of the company.

97. The translation submitted to us states that before commencing with construction the contractors shall have established the company?—Yes.

98. Was the company ever incorporated?—The only way to do business between here and London is this, you must arrange for the underwriters. In the meantime my solicitors drew up a trust deed which was passed by the Railway Commissioner. Then it had to be referred to London to see whether the underwriters had anything to suggest in the way of alterations. With this object in view I went home with the trust deed, which I brought back with one or two petty alterations. It was drawn up and approved by the Railway Commissioner in Pretoria.

99. The company has never actually been incorporated? Was it registered in London?—Yes.

99*. It had to be registered in Pretoria?—That is so, but the war broke out.

100. Where is the approval of the Railway Commissioner?—I am at a very great disadvantage. My lawyers are not here, and I know nothing about it except from an engineering point of view. I now produce a letter stating that it has been formally approved of. (*Letter put in.*)

101. We will get the original document of approval in Pretoria?—I am not sure that the Railway Commissioner is not in Ceylon.

102. I observe you say that the fully paid up share capital of the company shall not be more than the estimated cost of construction plus two-thirds thereof. What do you understand by that?—You must have a margin between the cost of construction and the outlay for promotion. I never found anyone who would induce a financier to give you £100 for £100. That amount is simply the maximum limit.

103. I want to know whether I am right in the construction of this wording, which is rather peculiar; 66 per cent. is the maximum of the paid up capital plus the estimated cost of construction. The difference between the estimated cost of construction and the paid up capital cannot be more than 66 per cent. over and above the construction cost?—The figures you are referring to are the cost of construction plus 66 per cent. as the registration figure. It does not follow that the company could not be promoted on a different basis. You have to register and you must leave a margin for emergencies, and if other expenditure is required, without altering the trust deed or without having a general meeting. By the authority of the Railway Commissioner you can issue a few more shares without incurring further expense.

104. These shares are shares over and above the cost of construction?—No, that amount is included in the suggested half million.

105. (*Mr. Ashmore.*) Then, for the sake of argument, supposing the capital to be £100 you would require to add other £66 in order to meet the requirements of the trust deed as approved by the Railway Commissioner?——

106. (*Chairman.*) Accepting Mr. Ashmore's proposition, you say supposing £166 is the total amount of capital you can issue, these reserve shares are to be within that £166?—Quite so.

107. And you say 10 per cent. of the net receipts shall be reserved for an extension fund. What do you mean by the net receipts there?—I should think that technically the difference is the difference between the revenue and working expenses. Then you pay fixed charges. It is what would otherwise give a dividend on ordinary capital.

108. You understand it as profits?—I should think so. I think that is the usual practice.

109. Then before you pay any dividend you have to set aside 10 per cent. profits to constitute a fund for extensions?—I think it says reserved for extensions.

110-1. It is stipulated that this fund shall only serve for the necessary repairs and extensions under the control of the Railway Commissioner, and is to be invested in Government securities. I notice also that in another clause the Railway Commissioner has power to keep up the condition of the line to a given standard and if that is not done by the Company he can draw on the reserve fund to do it on his own account. This 10 per cent. is for that purpose, and is also to complete a fund for extension?—I do not think so.

112. Then what does it mean? Do you give any meaning to the word "extension"?—I suppose it means that if we went to the Volksraad and asked for extension to the Deeper Levels, before we could issue any reserve shares we should have to draw upon that fund to such a point that the Railway Commissioner would think sufficient. I think it is a fair clause.

113. Before you pay any dividend to your shareholders you have to set aside 10 per cent. for the purposes specified?—No, sir, the reserve fund is set aside until it reaches a certain sum. It is such a small sum. It cannot exceed £25,000.

114. Please do not begin to defend yourself until you are attacked. I will tell you why I am asking the question afterwards. The profits payable by way of dividend are limited to 12 per cent. I want to know how this 10 per cent. is to be reserved out of profits before this 12 per cent. dividend begins to be taken into account?—Before you can pay any dividend you have to set aside 10 per cent. for the purposes specified in this Concession.

(*Mr. Ashmore.*) That 10 per cent. is clearly 10 per cent. on the whole capital, both debentures and ordinary shares.

(*Chairman.*) We will take it that it is on a capital of half a million. You first get 10 per cent. profit and set that aside for a certain purpose; then you are understood to pay 12 per cent. to your shareholders, and it is only when you pay 12 per cent. to the shareholders that the Railway Commissioner has jurisdiction to call upon you to reduce the rate.

(*Witness.*) I think it is rather difficult to understand a good many things done under the Railway Commissioner.

(*Chairman.*) One of the articles in the Concession (Article 18) sets forth that the Railway Commissioner has the right to lower the tariffs and generally to give instructions in favour of cheaper transport in the interests of the poor brickmakers and other interested parties, as soon as 12 per cent. is returned on the share capital of the Company.

(*Witness.*) I understand that 12 per cent. must include the reserve fund, so that it practically means, as I have always understood it, that on a capital of a quarter of a million the shareholders did not get a dividend the first year, and subsequently we had to establish a sinking fund. As I understand it the 12 per cent. profit has got to include everything, interest on debentures, etc.

115. (*Chairman.*) Supposing this Concession stands, would you have any objection to have it modified so as to make its terms perfectly clear?—I am perfectly agreeable to the dividend being limited to 8 per cent. The 12 per cent. mentioned there includes sinking fund, and it includes that reserve fund. I do not understand the extension fund to be included also in the sinking fund.

116. I know what it means. There are extensions contemplated in this Concession and you provide by Article 10 for setting aside a fund for these extensions. Supposing it was used in that way, where would the shareholders be?—They would have to pay it in lieu of a dividend.

117. It is done out of profits before you declare 12 per cent.?—That is not how I understand it.

118. You say half a million has been underwritten?—Yes, it has been arranged for.

119. What is the mileage of the line?—In reality it is a huge goods shed. The actual amount of track we propose to put down is 34 miles.

120. Does that include future extensions?—No, nothing except the hard red line shown on the diagram.

121. (*Mr. Ashmore.*) You say the cost of construction, including financing, interest, etc., is £14,000 per mile. What would be the cost of this extension exclusive of financing?—I cannot speak as to that, it is not my business. You have to go on what the market price is. For example, the Pretoria-Pietersburg Railway shares

have a guarantee of 4 per cent., and they stand at 83 in the market. These are debentures. Under a Government guarantee we could not expect to get more than 4 per cent. debentures from the Transvaal Government; the figure is somewhere about there.

122. You must have made some sort of an estimate of the cost of construction?——

(*Chairman*) £14,000 per mile is a good bit for a tram.

(*Witness.*) The financiers want pretty big prices. As I said just now you cannot estimate the cost simply by so many miles of railway and so much capital divided by the mileage. This would be a huge goods yard. There is an enormous excess of expense beyond what the railway would cost if it were on bare veldt. The difficulty of interfering with the surface arrangements of the mines is enormous. There are at least some 200 points and crossings on the 34 miles of rails, and on an ordinary length of railway if you have 20 points and crossings that would be as much as would be found necessary. This consideration adds enormously to the expense.

123. (*Mr. Ashmore.*) But your estimate here, including financing, comes to £476,000, and your estimate, exclusive of financing, is in round figures £300,000?—That is my estimate as an engineer.

124. So that, roughly speaking, a sum of about £200,000 goes in financing?—There is nothing definite in that report of mine.

125. But this statement is definite enough. Of course you might not be able to get it made for the money?—I do not think so. Rails have gone up very much, for example.

(*Mr. Ashmore.*) Still the margin seems considerable.

126. (*Chairman.*) You had to make as accurate an estimate as possible?—It is a genuine estimate which, of course, is subject to alterations, according to the market. Prices are rising, and I had to make a bigger allowance in drafting that report for the financiers to consider.

127. When you got your underwriting done and the trust deed approved by the Railway Commissioner, what did you then do?—I came back towards the end of August and deposited the plans which my assistants had been working at, on the 23rd August, according to the terms of the contract.

128. At that time was war in contemplation? But, of course, that is a matter of opinion; you did not get far on with your work?—It took the Railway Commissioner about three weeks to sign the plans. He signed them at the end of September. In the meantime I did not wait, but went on pegging out the line. The contractor had begun to make preliminary arrangements, collecting stores, etc.

129. When war broke out, what did you do?—I went down to Natal; I did not stop there.

130. Has anything been done since then by your people?—Not by my people, but there has been a great deal of work put into it. I have been back to London again.

131. What is the existing state of the proposed line? Has any of it been made?—Oh, yes, a considerable portion of it has been made. I have not been up to the Rand myself, but I understand it has been made by the military authorities.

132. With the use of your plans?—Yes, there is a certificate in existence that the Director of Military Railways had got my plans.

(*Chairman.*) We can hear all that from the military authorities.

(*Witness.*) He is quite welcome to the plans. It is only by hearsay that I can speak, but I believe that they have availed themselves of some part of my plans; in fact I have been told that they have adopted my scheme wholesale.

133. What is Mr. Wright's position in this matter? We have had a notice that Mr. Wright is an interested party?—He is a representative of a financial firm at home; some of the underwriters. The syndicate still hold the Concession and he represents the underwriters.

134. (*Mr. Loveday.*) When this matter was discussed in the Raad, as a matter of fact, if my recollection serves me correctly, a line seven miles long was contemplated. That is the Concession to Wolmarans, and that is the Concession on which you base your claim?—Yes. It is Wolmarans' Concession.

135. Then how do you account for it now being 34 miles in length? My recollection is that the representations made to the Raad were in favour of a line seven miles long?—That is as the crow flies, but you cannot build a railway as the crow flies.

136. But there is a very great difference between seven and 34 miles. My point is that the Raad never contemplated a track of 34 miles, and they granted a Concession which was represented to them as being seven miles long?——

The witness did not answer, and

Mr. Ashmore elicited from the witness that the section from the brickfields down to Burghersdorp, being the first section, is about seven or eight miles long.

137. (*Mr. Loveday.*) (*To witness.*) How do you account for this, that if Wolmarans' line was to be seven miles, you say that the distance is required to be 34 miles, although the whole line to the brickfields is about seven miles?—I do not know. I do not interpret the Volksraad resolution, but I say that the line as laid down in that plan is the only feasible track after consultation with the last Railway Commissioner. It is the only practical way to build a line from an engineer's point of view.

138. (*Chairman.*) Does not this 34 miles track serve a number of other interests besides those of the brickmakers?—It would save the mining companies £80,000 a year by permitting the coal supply to be brought over that line.

(*Mr. Loveday.*) The Concession was given in the brickmakers' interests. When the application was made for this Concession the general public were not considered except in so far as the brickmakers were concerned. It was represented that the living of these people would be taken away from them if they were prevented from occupying that ground in the centre of the town. Then it was suggested that this railway should be built to afford them an opportunity of continuing to make bricks at some other spot. Now we find that this railway is planned in such a way as to be quite outside the interests of the brickmakers.

139. (*Chairman.*) Was it stated that any other traffic except bricks was to be carried on this line?—I do not say that. The main object was to serve the brickmakers.

140. Then it seems to me that you arrive exactly opposite the point intended to suit the convenience of the brickmakers, and the rest of the line is 24 miles long?—It is the sidings. I have given you every mile of the track on the plan submitted to you as proposed to be constructed, and it was all necessary.

141. (*Mr. Loveday.*) The object sought to be gained was that this line should be constructed for the poor burghers of Johannesburg. That was the primary object, but you have gone beyond that object, and have wandered away down into a number of mines, and contemplated extensions some miles further on. There seems to have been another object, and that was to serve the mines. Did you intend to serve them with bricks or with what else?—I do not remember that the Volksraad excepted carriage for other traffic.

142. (*Mr. Ashmore.*) If the line did not pass the mines it would not have been worth making at all as a speculative transaction. To serve the brickfields alone it would not have paid?—If the physical contour had not forced us where it did I certainly should not have touched it. But the carriage of bricks was worth something. I think they would pay maintenance on this bit of line.

143. With a dividend?—No, I do not think so.

144. The interests your company had to serve were not those of the poor brickmakers but the rich miners?—No, it was a combination of the two. I thought the brickmakers would pay for the up-keep of that line, as that is a very keen industry in Johannesburg, and that ultimately some other good suburban traffic would be developed.

145. (*Chairman.*) The mining companies did not mind so long as a tramway of any kind was put in?—Up to date there has been no opposition. It has been generally favoured.

146. (*Mr. Ashmore.*) There is a provision made for raising a very much larger amount of money than the cost of construction. What was intended to be done with the rest of the money?—If a company is registered with half a million of money there is more required than the sum allowed for building the actual extent of line estimated, and the balance would be issued from time to time for further extensions.

147. How much for financing?—We should be extremely lucky if we could have debentures higher than

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£80 per cent.; if you can get 5 per cent. I do not think you will get ordinary shares much under that.

148. That would account for something like £100,000? —A great many of these shares would not necessarily be issued immediately. I did not contemplate more than £225,000 to start with.

149. It seems to have allowed for a very fair margin? —Of course I have not received a cent out of the thing as an engineer. The people who found the money for all the plans were to get something too.

(*Mr. Advocate Curlewis.*) This is one of the Concessions referred to in a letter from the Chamber of Mines, of which the Chairman has now a copy. As a matter of fact I have only to-day had an opportunity of seeing the report put in, and I have not yet had an opportunity of seeing the Concession. We propose to lead evidence in Pretoria on this matter, and it might be necessary to point out to the Commission the nature of the extension scheme which this gentleman proposed to the Chamber of Mines, and with which the Chamber of Mines would have nothing to do. It was originally suggested to have coal sidings along the Reef.

(*Chairman.*) I think we are fairly alive to the point. The witness has been challenged very fully on this point, as to the extended line of route which he proposed to construct under the Concession, and he has given what explanation he was prepared to give upon it. Have you any new point to introduce, Mr. Curlewis?

(*Mr. Kentish Moore.*) As a matter of fact we did intend to obtain the right to establish coal sidings in order to supply the mines. It is another coincidence that that line would have to cross the Netherlands Railway, and one railway crossing another, it goes without saying that a junction must be effected somewhere.

(*Mr. Curlewis.*) Did the Netherlands Company agree to the junction?

(*Witness.*) Oh, yes.

(*Mr. Curlewis.*) We maintain that if this Concession was to any extent to benefit the mines, the junction with the Netherlands Railway should have been much nearer to the starting point. Why did not you obtain a right to form a junction somewhere close?

(*Witness.*) That is a perfectly simple question and easily answered. The brickmakers live in the districts round about Fordsburg and Burghersdorp, and you had to give them transport for themselves to the brickfields. The Volksraad Resolution specially mentioned Johannesburg itself after going through certain districts.

Mr. Moore said he had some more important evidence to submit to the Commission, but it was not obtainable until he got to Johannesburg. He wanted his solicitor to produce documents with reference to the title and the plan.

(*Chairman.*) A full opportunity shall be given to address us on any points of law. I may compliment you on having submitted an extremely plain scheme, and if anyone interested in it wishes to address us on the subject in Pretoria, arrangements for doing so will be made. Have you any documents which you wish to put in?

(*Witness.*) I have documents to put in, but I must go to Johannesburg to find them.

(*Chairman.*) Very good; but having now had an opportunity of stating everything which you wish to state, you must now understand that you will not be permitted to supplement that evidence except by putting in documents or stating anything further that arises upon them.

(*Witness.*) I wish to hand the documents over to my solicitor so that he may put them in.

(*Chairman.*) You are at liberty to do so in accordance with the four points which are very clearly set forth in the notice, and with reference to these I may say that the statement you sent in showed me that you are fully alive to their importance.

(*Witness.*) May I come to Johannesburg and give evidence?

(*Chairman.*) Yes, to Pretoria, but it must not be understood that any witness, after being fully examined, is to have the right to re-open evidence.

(*Witness.*) Two of these points are legal points on which I know nothing, and there are some documents which I cannot find unless you allow me to go to Johannesburg.

(*Mr. Curlewis.*) I did not quite catch some portions of the evidence given by Mr. Kentish Moore. He spoke with reference to Eckstein and Co. Did he convey to the Commission that the Messrs. Eckstein approved of this Concession and wished to take it up? I should like to ask him a question on that point.

(*Chairman.*) I understood from Mr. Moore that Mr. Eckstein did not disapprove of the route proposed by this scheme. (*To Witness.*) Do you go further than that?

(*Witness.*) I say, on the contrary, that Messrs. Eckstein early last year had no objection to the Concession, and would have been very glad to get it for their mines, as the amount of money which would be saved would be tremendous. These same documents which I wish submitted to the Commission refer to the subject.

(*Chairman.*) Every gentleman interested in the Concession shall have the fullest opportunity of putting in all documents.

(*Mr. J. P. Fitzpatrick.*) I wish to say, sir, speaking on behalf of the Eckstein firm, that they absolutely disapprove of all Concessions, and it was for that reason I myself declined to have anything to do with this Concession. The witness has alluded to letters of introduction, and the inference may not have been designed, but such mention might convey an idea that we approved of it; it may have that effect upon the public mind. The question, so far as the Eckstein firm is concerned, is purely an engineering one, and went no farther than the discussion of certain plans.

(*Chairman.*) I do not understand Mr. Moore to go further than to say that the plans were not disapproved of. He has not conveyed to my mind any idea that in his opinion Messrs. Eckstein approved of the Concession.

(*Witness.*) I do not think this should be regarded as a mere Concession. It is precisely the same thing as a Public Bill at home. It is a misnomer to call it a Concession. Engineers will explain that the scheme has been examined over and over again, it was discussed for months, and not one word was ever said from the firm against it.

(*Chairman.*) We have to judge of the matter now. Is there any gentleman present on behalf of a Concessionaire who wishes his case gone into to-day?

(*Mr. Attorney MacIntyre.*) I have no evidence with regard to the other Concessions I represent, but I respectfully ask that the parties interested in the following Concessions be heard in Pretoria:—The Hatherley Distillery, the Match Factory, Pretoria, and the Pretoria Tramway Company. Messrs. Roth and Wessels will accept service in Pretoria.

The Chairman announced that evidence would be taken on the following day with reference to Banking Concessions, and on Wednesday on the subject of the Dynamite Concession.

Mr. Advocate Curlewis intimated that he represented Mr. W. C. Thompson in connection with the Dynamite Concession, as being the holder of all the rights in South Africa of an explosive called Roburite.

SECOND DAY.

LIBRARY BUILDINGS, CAPE TOWN.

Tuesday, 2nd October, 1900.

PRESENT:

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

THE NATIONAL BANK CONCESSION.

Oct. 1900

(*Chairman.*) Does anyone represent the National Bank? There are some statements sent in on behalf of other bankers, who object to the National Bank Concession. I will ask the representative of the Standard Bank to appear first.

(*Sir Henry Juta, Q.C.*) I appear on behalf of the three banks, the Standard Bank, the Bank of Africa, and the African Banking Corporation, all of which protest against this Concession. Might I ask what course of procedure will be adopted? The National Bank should be first heard in the natural order of things.

(*Chairman.*) The National Bank is not here, it is not our usual course to take objections first, but inasmuch as these three institutions are anxious to be heard, we will take their objections to the Concession in the first instance.

EDWARD BENNETT GARDINER, called; and Examined.

150. (*Chairman.*) Are you the general manager of the Standard Bank?—I am acting general manager.

151. Are you deputed by your bank to appear here?—I am the representative at present in this Colony of the Standard Bank.

152. Have you studied the Concession granted to the National Bank by the late Government of the Transvaal?—Yes.

153. I believe you object to it?—Yes.

154. Have you any general ground for objection?—I have stated my objections in the memorandum which I submitted, and I think they are clearly set forth there.

(*Chairman.*) I think you had better read that statement.

(*Mr. Kayser*, Attorney.) I regret that I am late. I represent the National Bank, and am authorised to watch the proceedings on behalf of that institution. The directors have not been in a position to give definite instructions. I understand that whatever objections are to be taken by the bank to these protests will be heard at Pretoria. I do not know if the gentleman now giving evidence intends to question the validity of the Concession or otherwise. I am not instructed.

(*Chairman.*) It is well to say that copies of the evidence taken by this Commission here will be sent to your clients in Pretoria. We understand from them that it would be more convenient for them to appear before the Commission there. They will then have a full opportunity of dealing with the objections.

Mr. Gardiner then read his statement as follows:—

Mr. E. B. Gardiner

The Standard Bank of
South Africa, Limited,
Cape Town, 21st Sept., 1900.

The Secretary,
Transvaal Concessions Commission,
Library Buildings, Cape Town.

SIR,

RE CONCESSION TO THE NATIONAL BANK OF THE SOUTH AFRICAN REPUBLIC, LIMITED.

In pursuance of the Notice No. 9 of 1900, of His Excellency the High Commissioner, we do hereby formally protest against the Concession granted in 1890 to Messrs. Labouchere, Oyens and Company, of Amsterdam, and Dr. Wilhelm Knappe, of Berlin, for the formation of the National Bank of the South African Republic, Limited, which Bank is now trading in the Transvaal, and is virtually a foreign institution.

We maintain that the said Concession is contrary to the spirit, and in direct violation of the London Convention of 1884, which provides, *inter alia*—Section 14, Subsection D—with reference to the rights and privileges of persons other than natives conforming to the laws of the South African Republic—that "they will not be subject in respect of their persons and property, or in respect of their commerce or industry, to any taxes, whether general or local, other than those which are or may be imposed upon the citizens of the said Republic."

Apart, however, from the question whether or not the said Concession is a breach of the London Convention of 1884, its terms are contrary to the ordinary principles of justice and public policy, and act, moreover, most unfairly on the other banking institutions trading in the country.

By Article 15 of the Concession, the late Government has granted the National Bank the preference for the execution of all its foreign financial transactions upon the same conditions as others may be willing to undertake it.

By Article 16, the total amount of the National Bank notes in circulation shall, to an extent of not less 33⅓ per cent., be covered by legal coin, or bullion, but such monies as the Government may at any time owe to the said bank in accordance with Article 13, shall, for the purpose of estimating the aforementioned 33⅓ per cent., be deemed equivalent to legal coin, or bullion, whereas other banks in the Transvaal which issue, or have issued, bank notes, are obliged to have in hand at their head office and branches in the Transvaal a specie reserve in legal coin equal to 33⅓ per cent. of the full value of all the bank notes in circulation at the time, *and available assets in the State for the balance.*

By Article 25 the late Government binds itself during the term of the said Concession to give to none of the existing or afterwards established banks similar privileges to those specified in Articles 27 and 28, viz.:—

Article 27 provides that the bank notes issued by institutions established, or represented, in the South African Republic shall, twelve months after the bank has commenced its business, be no longer accepted by the Government offices, and that the bank notes issued by the National Bank of the South African Republic, Limited, shall be legal tender for transactions in the South African Republic.

Article 28 provides that the notes of the National Bank of the South African Republic, Limited, shall at all times be free from stamp duty. (Other banks pay stamp duty on their notes.)

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By Article 29 it is stipulated that the National Bank shall be free from licence duty, as imposed by law, whereas other banks carrying on business in the country have to pay to the Government a yearly licence of £150 for every one of their branches.

It may be further pointed out that the National Bank of the South African Republic, Limited, has obtained the right to mint gold and silver for a term of twenty-five years, and to appropriate 70 per cent. of the net profit on the coinage of small money, the Government receiving the remaining 30 per cent., and that, notwithstanding the right thus obtained, and the fact that the importation of British silver into the Transvaal was prohibited after the establishment of the Pretoria Mint, *the said bank has failed to redeem the silver minted by them when called upon to do so.*

I have the honour to be, Sir,
Your obedient servant,

E. B. GARDINER,
Pro General Manager.

155. (*Chairman.*) When was the bank called upon to redeem this silver, and by whom?—The bank was called upon to redeem the silver by the Standard Bank, by the African Banking Corporation, and also, I understand, by the Bank of Africa.

156. When was that?—They were called upon first in July, 1893, I think. It was then arranged that they should redeem it, but they refused to redeem it in February last.

157. You say "arranged" to redeem it. Had any correspondence passed between you on the subject?—Yes, between our manager in Pretoria and the Executive Council. In July, 1893, they pointed out to the Standard Bank that the silver in Johannesburg and Pretoria should be redeemed, and as a matter of fact it was redeemed.

158. Have you got that correspondence?—There was correspondence between the head office of the Standard Bank here and our office at Pretoria.

159. Yes, but I understand that correspondence took place between you and the National Bank?—No, it took place between our manager in Pretoria and the State Secretary, or some other head official of the Government.

160. Can you give us that correspondence?—I shall not be positive whether it was correspondence or simply a verbal arrangement. The advice that we got here in the bank was that it was arranged.

161. Under what right did you claim that they should redeem the silver?—It states in the Mint Law, Articles 12 and 14, that the Government shall appoint places where the silver shall be redeemed, and it also states in the Mint Concession that the coins are manufactured or minted for the bank and not for the Government. We applied to the executive in Pretoria, and they said that the National Bank would redeem the silver there.

162. You have made yourself familiar with the Concession. Can you refer to any article in that Concession under which there is an obligation to redeem?—That is in the Mint Law.

163. We will come to that, but so far as this Concession is concerned, you do not rely upon the Concession itself to show any obligation on the part of the bank to redeem?—Article 30 F stipulates that coins are to be made for the bank, and are to stand for legal circulation. I maintain that the National Bank obtained a lease of the Mint, and consequently it took over all obligations. If they have a lease of the Mint, they are bound to fulfil all obligations.

164. What obligation do you say exists in respect of silver?—They had to redeem the silver.

165. At what time?—Certain places were to be pointed out by the Government.

166. And what you are claiming is the National Bank should redeem the silver at your request?—At the request of any holder.

167. You made such a request and they refused?—Yes, it was made in Pretoria.

168. You rely as constituting that obligation upon the Concession in the first place, Art. 30 F?—Yes, the coins have to be made for the Bank and not for the Government.

169. I do not see any such obligation in F, the paragraph which you have pointed out?—Of course this might be taken in conjunction with the Mint Law.

170-1. We have not a copy of the Mint Law?—I have a copy here, but it is in Dutch.

A gentleman came forward and translated section 12, viz., that the Government shall point out offices where gold could be changed for silver issued by the Mint, and silver of the value of £5 was to be the smallest amount that could be offered for exchange.

172. You say that in 1893 you called upon the National Bank to redeem silver. What quantity?—At that date they redeemed in Johannesburg £1,500 worth.

173. Have they at the request of your bank, redeemed any since that date?—I have no doubt they have redeemed some since that date, but they have subsequently refused.

174. Had any question of refusal to redeem arisen till 1899?—It would be difficult for me to state that here; of course you must recollect that as general managers our opinions would be formed from reports submitted to us by managers throughout the country. If you are going to Pretoria you can inquire on these points.

175. Have you representatives up there?—Yes, both in Pretoria and Johannesburg.

176. (*Mr. Ashmore.*) There would be a record of all silver that would be delivered to this bank and which had to be replaced?—Yes.

177. And as far as you know it was not until 1899 that they refused to redeem?—I know it was refused then, and I was informed that their plea for not doing so was that the Government had not pointed out any specific place where to redeem it. They did not deny their obligation under the Mint Law to redeem it, but their excuse was that the Government would not fix a place. I maintain that they have fixed a place.

178. So far as you know no other plea was given than that?—No, simply that the Government had not fixed a place. I might mention from a note which I have here that we made application to the Treasurer in Pretoria on the 11th July, 1893. Apparently some question must have arisen, and I referred to our correspondence with the Pretoria Branch. At that date we made application to the Treasurer and insisted on a place being pointed out for the redemption of silver. An arrangement was then made, but whether verbally or by letter I cannot say. I know, however, that the amount redeemed in Johannesburg was £1,500.

179. Probably the application to the Government was made in writing?—I cannot be certain of that. Our manager was familiar with the Government officials, and he may have gone round to the offices of the Executive Council and arranged the matter verbally.

(*Sir Henry Juta.*) Mr. Gardiner might refer to subsection 30, which shows that gold is the standard for bullion. That clause states that the bank, viz., the National Bank, shall be bound to accept all the standard bullion which is offered by the Government to the public for coinage, and at any time silver may be accepted as standard bullion, and the maximum mintage shall be settled by the Government in conjunction with the bank.

(*Witness.*) Quite so, that shows that there was an arrangement between the Government and the bank.

180. (*Mr. Ashmore.*) Does the Mint Law contemplate the possibility of silver being made a standard?—It does not exactly contemplate it, but the intention was this. I may state that I found from reading past correspondence that the intention was that the country should not be flooded with silver, and this information was imparted to us by Dr. Knapper, one of the managers of the National Bank, and one of the Concessionaires. They fixed the amount at £5 for the redemption of silver, and the object was that in case the country should be flooded with silver the Government could make a regulation to stop it.

(*Mr. Kayser.*) I wish to direct the attention of the Commission to the correspondence between the Government and the National Bank, altering the terms to six months' notice of cancellation of the Concession. You will find this set forth in the papers submitted to you.

(*Chairman.*) I will read it to you, Mr. Gardiner.

Government Offices, Pretoria,
30th May, 1899.

Secretary of de Nationale Bank der
Zuid Afrikaansche Republiek,
Pretoria.

SIR,—With reference to former correspondence herein and in answer to your letter of the 18th inst., *in re* certain proposals of the Board of Directors of De Nationale Bank der Zuid Afrikaansche Republiek, with reference to the Founders' Shares, I am instructed to inform you that the Executive Council has resolved

to agree to the proposals of the Bank on condition that the Government shall have the option to terminate the lease of the Mint on giving six months' notice, and then to take over that institution for its own account.

I have the honour to be,
Your obedient servant,
(Signed) F. W. REITZ,
State Secretary.

(*Mr. Kayser.*) The correspondence goes on to show that that was carried out, and a Volksraad resolution was adopted to that effect.

(*Chairman.*) The Mint Concession was for 25 years.

(*Mr. Kayser.*) Clause 30 sub-section 8 refers to that.

(*Witness.*) That was a subsequent arrangement, but of course that would not do away with previous obligations to redeem the silver.

181. (*Mr. Ashmore.*) Is it the case that silver in the Transvaal was a redundant quantity?—As it came out it amounted to £336,000.

182. Is that too much?—I think so, because, until a recent period, the National Bank had a very large amount in their coffers which they could not get rid of until the last moment. Just before the British occupation they were paying out silver, so much so that I was informed when I was in Pretoria last July, that they practically had no more silver left in their coffers.

183. Will you look at clause 16 of the Concession? The total sum of notes in circulation must be covered by at least 33⅓ per cent. of legal coins or bullion. What do you understand by the word "bullion"?—They may have understood it to mean native gold in hand.

184. I am asking you as a banker, what would you understand to be legal coin or bullion?—Well, I would understand that to mean ingots of gold, or it might be ingots of silver.

185. Which would you understand?—I think it would apply to both.

186. And legal coin, would you understand that to be covered by silver as well as gold?—Silver is only legal tender up to 40s., that is also in the Mint Law. You will see from Article 30 of the Concession that the intention was gold throughout, and if you turn to letter F, Article 30, it is stated that "if at any time silver should be accepted as standard bullion," which shows that at the time the intention was that gold was to be the standard bullion.

187. I only ask you as a banker what would you understand to be legal coin or bullion?—There is a difference of opinion on this point. I believe it is sometimes intended to mean silver. I myself put the construction upon it that gold is intended.

188. I do not ask you on any question of law, or as having regard to the rest of the Concession, but I understand the answer you have given. Now will you look at this Memorandum of the Association, and read out Article 74?—"No director or intended director shall be disqualified by his office from contracting with the bank either as customer, seller, broker, banker, commission agent, financial agent, or otherwise, nor shall any such contract, or any contract or arrangement entered into by, or on behalf of the bank, with any company or corporation, or partnership of, or in which any director shall be a member or otherwise interested, be voided, nor shall any director so contracting, or being such member, or so interested, be liable to account to the bank for any profit realised by any such contract or arrangement by reason only of such director holding that office, or of the fiduciary relation hereby established, but no such director shall vote in respect of any such contract or arrangement, and the nature of his interest must be disclosed by him at the meeting of the directors at which the contract or engagement is determined on, if his interest then exists, or in any other case, at the first meeting of the directors after the acquisition of his interest."

189. Has your bank got any such provision as that in its constitution?—That I really cannot tell you, but I presume there would be.

190. Is it usual?—It is according to Cape law. The banks are bound in their published statements to state whether any director or officer has any direct or indirect liability. We are bound to certify to that effect.

191. Yes, he must announce it, but is he allowed to make contracts with his bank and not account for them? —Excuse me, what has the Standard Bank to do with the present inquiry? I think such a question is quite irrelevant.

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192. I ask if that is a usual provision: with us in England it would be quite unusual. The Standard Bank is an English corporation, and I should say that any such provision is one that would be extremely informal? —I think the question put to me is unfair, simply because it is bringing the Standard Bank into a matter which is entirely foreign to their business. We are an English bank registered in England.

193. But if you are unaware that there is any such provision or not, I will take your answer to that question. Are you aware that such a provision exists in your trust deed?—No, I am not aware.

194. And you do not know whether it is a usual provision or not?—With English banks it is unusual.

(*Chairman.*) I should think so.

195. (*Mr. Ashmore.*) One of the objections you have raised against this National Bank is the unfairness with which your notes are treated as compared with the notes of the National Bank in the Transvaal. Had you, as a matter of fact, before this bank was established any great circulation of notes in the Transvaal?—Yes; our circulation would be about the same as that of the National Bank circulation, roughly speaking, that is between a quarter of a million and three hundred thousand pounds.

196. Was the effect of this provision to drive your circulation out of the country?—It did have a certain effect in that direction, but in connection with the matter I should like to point out and to lay stress upon the point that the National Bank was only bound to provide bullion to the extent of 33⅓ per cent., and they were allowed to deduct any balances which the Government might owe them from that. Well, then, supposing that the circulation of the National Bank was three hundred thousand pounds, which is about the average, and the Government borrowed from them one hundred thousand pounds, they were not bound to provide a penny. The consequence was that if mismanagement occurred in their bank and a false circulation was thrown upon the country, any arrangements for redemption would have been quite futile.

197. (*Mr. Ashmore.*) A provision is also made here that your bank note issue in the Transvaal should be secured by an equivalent in coin or else by other assets. Was any action taken by the Government of the Transvaal to test whether your notes were so secured?—As a matter of fact, we always had more coin in hand than our notes in circulation.

198. So that you did not suffer any damage under that provision?—That I am not prepared to say.

199. (*Mr. Loveday.*) You say that the bank refused to redeem the silver?—Yes.

200. Did you ever make a practical test of that point? —Silver has been tendered to the bank in February in Pretoria, and has been refused.

201. (*Sir Henry Juta.*) When were you established there?—Some years before the National Bank was established.

202. And you remained in the country up to the present time?—Quite so. I might remark, however, although it might be considered quite *en passant*, that shortly after the National Bank was established we were still importing silver into the country. We had our reasons for doing so, and I was personally threatened by, I think, the State Attorney that if we continued to do so we would be turned out of the State.

203. Did British silver circulate in the country side by side with National Bank silver?—Oh, no; it was prohibited. The British silver was collected and transmitted home.

204. (*Sir Henry Juta.*) Can you fix the date when you were threatened?—It might have been about 1893 or 1894.

205. Had silver been prohibited from being imported? —Oh, no; at that time I remember Mr. Rhodes happened to be there, and the State Attorney often complained to Mr. Rhodes, who was then Premier of this Colony.

206. (*Chairman.*) You have a copy of the Mint Law, Mr. Gardiner?—Yes, it is the only one I have got. It is Act No. 14 of 1891.

JAMES SIMPSON, called; and Examined.

Mr. J. Simpson.

2 Oct. 1900.

207. (*Chairman.*) The statement you have sent in to us on behalf of the Bank of Africa, is practically the same as that sent in by the Standard Bank?—Yes.

208. Do you wish to add anything to what Mr. Gardiner has said?—Well, on reading the High Commissioner's notice regarding this Commission, I thought it probable that any evidence taken in connection with this inquiry in Cape Town would be reserved until you had gone to Pretoria. At the same time, we are very glad to have an opportunity of coming before you. I agree generally with the statement made by Mr. Gardiner in regard to the Concession which was granted to the National Bank. I have been opposed to it from the very first. It was granted at a time long after the Standard Bank, the Bank of Africa, and the Natal Bank were established in the Transvaal. There was nothing in the Concession granted that was to benefit the public, and on these grounds we took exception to any Concession. Indeed, it was not necessary. Without going into details, of course, the taxes imposed upon us have directly or indirectly to be borne by the public. We have to recover what we spend. The taxes and restrictions have prevented us from extending our branches; and, up to this day, we have only four in the Transvaal.

209. Do you broadly say that it is not to the advantage of the public that the State should have one favoured bank?—I do say so in this case. There is no reason why such a Concession should have been granted. There were three well-established and tried banks in the country long before they (the National Bank) ever came in. The Transvaal Government started dealing with strangers, but we were known, and it was of more advantage to the State that they should deal with us instead of with strangers.

210. (*Mr. Ashmore.*) Before this new bank came in, had the Government kept an account with the Standard Bank and with other banks?—We had transactions with the Transvaal Government but the Standard Bank was their bankers. We and other banks had opportunities of doing business with them all the same. I am now informed that the Cape Commercial Bank was the Government Bank before the Standard Bank stepped in. I might add that this Concession was given in a most extraordinary manner. It is rather ancient history now to go back to that time, but I believe that there were very divided opinions in the Volksraad about it, and a vote was obtained in some way or other, by which it was left to the discretion of the Executive to give a Banking Concession to whom they thought fit.

210*. (*Chairman.*) Perhaps you have not studied the resolutions of the Raad upon this point?—Of course, one is hardly prepared to go into these details, it is such a long time since. I am aware that afterwards the Raad did confirm the action of the Executive Council.

211. (*Mr. Ashmore.*) You were about to say something with regard to the silver?—Well, for many years past the position of silver coin in regard to its convertibility in the Transvaal has been an unpleasant one. I have heard that there were difficulties, or that there were likely to be difficulties, about the conversion. On one occasion, I think in April, 1896, one of the officials of the Executive Council called upon me and complained very much about the Standard Bank sending silver to the National Bank for conversion into gold, and he then said that, so annoyed were the Executive at this action of the Standard Bank, that they had it in contemplation to refuse a renewal of their licence to that bank. I took this as a hint to ourselves that we had better not do the same thing, and I took precautions accordingly. In fact, I took very good care that our managers never had too much Transvaal silver. I have no doubt that evidence on that point can be given to this Commission at Pretoria by officers of the Standard Bank. One of the latest things that has come before me occurred at Lorenço Marques in October last year. Up to that time British and Transvaal coins circulated there on equal terms, both gold and silver coin; but suddenly, without any notice whatever, the National Bank intimated that they could no longer negotiate Transvaal coin, while at the same time they were paying out Transvaal coinage. They paid it out, but they would not take it back.

212. There was a branch of the National Bank at Lorenço Marques?—Yes, it is a place where coin could be circulated very abundantly. Native labourers in the mines, after they got their wages, generally went down there, and it was a convenient place to put out Transvaal coin, but they refused to take it back.

213. That information is given to you by one of your officials at Lorenço Marques?—Yes. And if the Commission require it he can be instructed to proceed from Lorenço Marques to Pretoria in order to give evidence to this effect.

214. Can you give us his name?—His name is Mr. Fitzgerald.

(*Chairman.*) We will take it from you, Mr. Simpson, that the statement which you have made is correct, and I have no doubt Mr. Fitzgerald can be produced if necessary.

215. (*Mr. Ashmore.*) Was there ever any difficulty about the convertibility of the National Bank notes?—Not that I am aware of. There could hardly be any such difficulty so far as the other banks were concerned on account of the mutual clearance arrangements with which they strictly conformed.

216. (*Chairman.*) As regards that Article 74 in the Memorandum of Association to which I referred in the questions I put to Mr. Gardiner, is that a usual provision?—Very unusual. I can give you the usual provision entered into with such banks as the Bank of Africa, which is an English company, established under the Joint Stock Companies Act. Our Articles of Association are almost the same as most English banks. Clause 72 of our Articles of Association reads as follows. This clause deals with contracts in which directors are interested, and states:—"Any director, either individually or as a member of a partnership, company, or corporation, may, notwithstanding any rule or law of equity to the contrary, but subject to the qualifications hereinafter in this Article prescribed, be appointed to any office under the company, with or without remuneration, or enter into and be interested in any contract or dealing with the company, or any operation or business undertaken by it or in which it is interested. If the fact of his being a party to or interested in any such contract, dealing, operation, or business shall be evident from the nature or form thereof or of the documents executed by or on behalf of the company, or communicated to or proceeding from it in connection with such contract, dealing, operation, or business, or if his being so shall merely result from being a member of directors of some other company or corporation, he need not give notice to the board of his being a party to, or interested in such contract, dealing, operation, or business; but in all other cases to entitle himself to the benefit of this Article, he must either before the company enters into the contract or dealing, or undertakes or assists the operation or business, or if he shall not have become interested therein until after that time then so soon as reasonably practicable, after he shall become so interested, give notice to the board of the fact of his being a party thereto or interested therein, and so far as the board shall require him to do so, of the nature and extent of his interests."

217. (*Mr. Ashmore.*) Do I understand that the licences which the banks hold are licences for a year, which may be cancelled at any moment?—Yes. For one year. I do not know that there is any condition attached to the licence, but obviously it would be within the power of the Government to cancel it.

218. They might refuse to renew it at the beginning of any year?—Yes.

219. Therefore you are entirely at their mercy?—Yes. I may point out that Act 22 of 1892, amended by the Act of 1893, gave the Government the right to refuse any licence to any bank in the South African Republic which failed to pay its notes. The actual reading of the section is as follows:—(Section 3) "Whenever any bank in the South African Republic ceases to issue bank notes, or fails to pay its notes in legal coin, the right of such bank to issue bank notes shall immediately cease and shall not be renewed in the latter case."

220. (*Chairman.*) You do not wish to add anything to what Mr. Gardiner said with regard to the obligation to redeem?—No. I am quite in agreement with him.

221. (*Mr. Ashmore.*) What is your view as to the meaning of the term "bullion"?—I differ with Mr. Gardiner to this extent, that I should not consider silver coin as representing bullion.

222. Mr. Gardiner would take silver ingots to mean bullion?—I consider that there is a marked difference between coin and ingots, and I should think that the

term "bullion" would mean silver ingots and native gold.

223. (*Sir Henry Juta.*) When was your bank established in the Transvaal, Mr. Simpson? Was it before this Concession was granted to the National Bank?—Oh, yes. long before that date.

224. And your bank has remained in the country up to the present time?—Yes.

225. You were asked as to whether it was to the public interest that such a Concession to the National Bank should be granted. Can you tell me whether this bank has a greater latitude than other banks?—They have the advantage of the Government's money passing through their hands, and they trade without paying any licences.

226. (*Sir Henry Juta.*) But so far as the public is concerned were there more restrictions imposed upon the other banks than upon the National Bank?—I do not think so in regard to the general business.

227. Can you say whether the fact of the notes of those other banks not being regarded as legal tender caused any inconvenience to the public?—Oh yes, considerably; holders of our notes had to get Transvaal National Bank Notes in order to pay any revenue owing by them. *Mr. J. Simpson.* 2 Oct. 1900.

228. Did it cause any inconvenience to the mines?—I do not think so, because payments of the mines are invariably made in gold and silver.

229. (*Mr. Ashmore.*) I observe that there is a provision in this Banking Concession by which it appears that it was contemplated that the bank should start a kind of land mortgage business. Was that engaged in?—I should say it has been, but without reference to the books I cannot say anything positive. I never heard that they raised money on land mortgage bonds.

230. (*Sir Henry Juta.*) Was there any difficulty with regard to the payment of claim licences?—Oh yes; they could not take our notes to the Mining Commissioner, they had to take National Bank notes, and that was a very serious matter.

ROBERT LITTLEJOHN, called; and Examined.

231. (*Chairman.*) You are the general manager of the African Banking Corporation?—I am. *Mr. R. Littlejohn.*

232. You have sent in a statement which is in substance on the lines of the evidence already given?—Yes.

233. Do you agree with the evidence given by Mr. Gardiner?—I do; in fact, my views are in exact conformity with the views of all British banks in connection with this National Bank Concession.

234. Do you wish to add anything to that evidence with reference to your own bank?—I do not know that there is anything that I can say, except that I am very glad to have an opportunity of making it clear that the African Banking Corporation joins in the protest against the Concession now under consideration.

Chairman (to Sir Henry Juta): Do you wish to say anything?

(*Sir Henry Juta.*) I do not think it is necessary to do so at this stage. Of course one has not heard the evidence which is to be produced by the concessionaires in order to establish their case, and it would only take up the valuable time of the Commission if I were to argue anything now.

JOHANNESBURG CITY AND SUBURBAN TRAMWAY CONCESSION.

JAMES HENRY TYRRELL, General Manager of the Johannesburg City and Suburban Tramway Company, gave evidence, and put in a sketch map of Johannesburg, showing the various lines of the tramway system.

235. (*Chairman.*) The original Concession, which is before me, was granted on the 16th April, 1889, to Mr. Sigmund Neumann, of Johannesburg. Is that so?—Yes. *Mr. J. H. Tyrrell.*

236. Do you know whether the original Concession was granted pursuant to any authority from the Raad?—I believe so, and I think we have the document in Johannesburg.

237. Did this Neumann transfer his rights to you on the 7th September of the same year?—Yes.

238. What was the price of the assignment?—I know what the capital of the company is. I did not join the company till September, 1890.

239. What was the consideration paid to Mr. Neumann for the sale of the Concession?—As a matter of fact I cannot say. I know what the capital of the company is.

(*Mr. Seward Brice, Q.C.*) All these facts are in the books of the company in Johannesburg. The secretary is ill in bed, in Cape Town, but even if he were here to give evidence he could only speak as to facts by trusting to his memory.

240. (*Chairman.*) (*To witness.*) You say you know what the capital of the company was? What was it?—The capital of the company was £225,000—£175,000 issued, and £55,000 held in reserve. The working capital was £50,000.

241. And until the transfer of his rights to you Mr. Neumann had not done anything by way of constructing a tramway?—No.

242. Did your company on receiving the assignment of this Concession proceed to construct a tramway?—Yes, at once.

243. That was early in 1890?—The materials were ordered in 1889.

244. How much did you construct straight away?—Four and three-quarter miles were open for traffic on the 24th February, 1891.

245. And since then I gather the system has been extended so that the mileage of the tramway is now stated to be 11¾ miles?—That is so.

246. Over what period did this extension take place?—During 1895-96. The last piece was laid down two years ago. The main body of these extensions were made actually in 1896 and 1897 and there were some trifling additions afterwards.

247. I suppose the books will show what the cost of construction was?—Certainly.

248. Can you give me any idea?—Yes, it was about £4,000 per mile.

249. (*Mr. Ashmore.*) Does that include rolling stock?—No, only the tramway *in situ*.

250. What is the total expenditure on equipment?—We have spent approximately £100,000 on the works, that is money sunk. The tram line cost £52,000.

251. What fares do you charge for passengers?—Each section was divided into three equal parts, and 3d. a ride was charged for any section, and 6d. for the whole distance. The minimum fare was 3d., and the maximum was 6d., except on the line to Jeppestown, on which the charge was 1s. for the whole distance.

At this stage witness gave explanations of the tramway route as depicted on the map before the Chairman.

252. Since you have been general manager have you tried any experiment as to a reduction of fares?—It has been talked about a great deal.

253. (*Mr. Ashmore.*) What does the fare of 6d. come to per mile?—It works out at 3d. per mile, that of course is for ordinary tickets, but the monthly tickets issued make the fare much cheaper than that.

254. (*Chairman.*) Taking the year 1898, the last complete year, can you give us what the receipts were per car per mile?—2s. 5d. per car per mile, and it costs 2s. 2d.

Mr. J. H. Tyrrell.

2 Oct. 1900.

255. (*Mr. Ashmore.*) You have no classes in your cars?—No, according to the Transvaal Law no coloured people are allowed to ride in our trams.

256. I see in the statement before me that dividends since 1891 have been paid as follows:—In 1891 no dividend, 1892 no dividend, 1893 4 per cent., 1894 4 per cent., 1895 6 per cent., 1896 10 per cent., 1897 7½ per cent., 1898 nothing, 1899 nothing. How do you account for that fall in 1898?—Things were very bad at Johannesburg during that year. Many people were away, and our receipts had fallen off very considerably. We may have made the same profit but it was not advisable to declare a dividend. 1897 was a very good year; there was a boom and an enormous population. Our receipts will show that very clearly. The monied people went away in 1898, and in 1899 we stopped running at the end of September. Things were worse still then, and our receipts only averaged 2s. 2d. per mile.

257. Taking all things into consideration what would you consider to be a good year? You have told us that 1895 and 1896 could not be taken and that 1897 was an unusually good year?—It is difficult to say. We have been going ahead right through, but our winter traffic is always worse than our summer, yet we were always advancing.

258. (*Chairman.*) I suppose the absence of a dividend in 1898 and 1899 can be accounted for by a decrease in your profits?—With the exception of 1898 we were increasing. It does not always follow that an extension of a tramway system means increased profits. My experience is that the fewer trams you run the greater will be your profit. We did not have the plant in those previous years. In 1896 we really could not carry the people; then we got plant out, and while our expenses increased our profits became loss.

259. When was your last substantial extension?—In 1896 or 1897, when we constructed the Cemetery extension.

260. That was nearly all completed by the end of 1897, and since these large extensions have been completed you have not paid any dividends?—Apparently not.

261. I want to know what your contention is as to the scope of this Concession?——

(*Mr. Brice.*) That is explained in Clause 1. I should not go outside of that. I think the Commission has a translation.

(*Chairman.*) Yes, the laying of rails for the purposes of animal traffic. You agree that the Concession does not go any further?

(*Mr. Brice.*) Yes, subject to the power to apply for further rights in favour of the Concessionaire when he has done his duty. It is impossible for me to translate the clause as the document is in Dutch, and my knowledge of Dutch is only of a few weeks' duration. I do not know if Mr. Curlewis can translate it.

(*Mr. Curlewis.*) The phrase to which Mr. Brice refers should, I think, read, "under similar conditions."

(*Chairman.*) Yes, it means that if some person bid to the authorities a certain sum for the privilege of running electric tramways, and if this Concessionaire would offer the same terms he should have the right in preference to the new bidder.

(*Mr. Brice.*) With regard to the phrase "animal traffic," it seems to me that the meaning of the expression is—on the same terms as the existing Concession, and does not refer to any increased terms. I maintain we really had the right as regards animal traffic, and as regards any other form of traffic, that we really have a preference.

(*Chairman.*) Do you agree that the term has expired in which you can be expropriated?

(*Mr. Brice.*) I cannot say definitely, as all our documents are in Johannesburg, and there is a further agreement with the Volksraad or the Executive Council under which that right has been waived so that the power of pre-emption has now gone.

262. (*Chairman.*) You say there has been some agreement between the Concessionaire and Executive that Clause 31 should be waived? Of course we shall have that in Johannesburg?—Yes.

263. You do not know whether it was the Raad or the Executive?—No.

264. Can you tell us what consideration was given to induce the Government to waive this expropriation Clause 31?—We carried the Government mails. We had post boxes on the cars and were carrying the mails on a payment. Then the company took steps to cancel this expropriation right, and we carried these post boxes for nothing. We also carried the telegraph clerks or messengers for nothing, as they had done away with their bicycles.

265. (*Mr. Ashmore.*) What was about the date when your company added so largely to the capital? You say the cost price was £100,000 and the capital was £200,000?—The original capital was £175,000, of which £50,000 was working capital. It was increased once since then by 35,000 shares issued. That was for additional construction works.

266. (*Mr. Brice.*) (*To witness.*) With regard to the question of cost; you say the expense has been 2s. 2d. per mile. Has that been the expense for a number of years?—Yes, it would be the average expense for a number of years. 1899 was slightly less.

267. With regard to the minimum, can you reduce that expense much?—No, I could not, under the present conditions; wages are too high there. With regard to the lowest fare charged, namely, 3d., the 3d. coin is the lowest coin we can work with on the Rand, no pence being in circulation there.

268. I refer you generally to your Concession. The Government has a considerable amount of supervision over the manner in which you carry out your Concession;—Yes.

269. It has power to look at your permanent way and so on, and to exercise a certain amount of jurisdiction in your manner of carrying on the tramway system?—Yes.

270. You have had no complaints from the Government?—We have had no complaints as to the way in which we carry out the work; in fact, we have had a very favourable report from the Government Engineer.

271. (*Chairman.*) Where is that?—It is in Johannesburg.

272. (*Mr. Brice.*) I should like to put that in. (Continuing his examination of witness.) As regards the Municipality of Johannesburg, have they any complaints?—No serious complaints; they have pointed out little matters from time to time.

273. Have they an engineer?—Yes, the Municipal Engineer is also the State Engineer.

274. (*Chairman.*) There is nothing in the Concession which gives the Municipality any power over the tramway?—No, but the Borough Engineer happens also to be the State Engineer.

275. I understand that the total amount of the expenses is something like £100,000?—Yes.

276. Have you any debentures?—No.

277. And these dividends represent substantially the whole profits available?—Yes.

278. The company has no reserve fund?—No, all these details will appear in the books of the company at Johannesburg.

279. (*Mr. Loveday.*) With regard to your extensions, were they constructed out of profits or out of capital?—The 35,000 shares issued additionally barely went to pay the cost of extensions. For the first two years all the profits went to pay for extensions.

280. (*Mr. Ashmore.*) You say the issued capital of the company was £210,000, the working capital was £50,000, and £100,000 was spent on construction? Where is the rest of the money?—It was expended in promotion, I suppose.

281. Will that appear in the books?—I think it will be shown in the books.

282. How was the £50,000 working capital employed?—We spent £42,500 within the first 18 months on the depôt, cars, and general equipment.

283. (*Mr. Ashmore.*) I notice that the rolling-stock is represented at £50,000?—I know we made a start after spending £42,500.

284. (*Mr. Loveday.*) You have actually expended £100,000 on equipment, construction, etc. There is, therefore, £110,000 left to be accounted for. Where is that?—Promotion, I suppose.

285. (*Mr. Loveday.*) You paid dividends on this £210,000, and the actual expenditure has been £100,000.——

286. (*Mr. Brice*, to Witness.) Are you in any way acquainted with what took place in connection with the promotion of the company?—No.

(*Mr. Brice.*) I submit this question as to promotion is in no way within the notice given out by the Com-

mission. It is a matter which affects the shareholders in the company, and does not bear on the validity of the Concession, whether it was properly obtained through the Volksraad or was properly carried out. I am prepared to go into the matter fully if it comes to a question of the promotion of companies on the Rand. but in that case I am afraid we shall be landed in an inquiry which will last till Doomsday.

(*Chairman.*) We have to examine into the merits of the various Transvaal Concessions, and to obtain any information which is germane to the subject of any one of these Concessions. Her Majesty's Government declines to recognise any Concession until the Concessionaires have proved certain things.

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(*Mr. Brice.*) But with regard to this particular Concession I shall have to deal with the question of promotion.

(*Chairman.*) If you give us the destination of this £110,000 I shall be much obliged.

(*Mr. Brice.*) Well, there is a generic term for transactions which are sometimes described as "promotion."

287. (*Chairman.*) Yes, we have arrived at that conclusion. (To the witness). You do not know what sum was paid to Mr. Neumann for the Concession?—No.

288. (*Mr. Ashmore.*) Nor do you know what Mr. Neumann paid for the Concession or if he paid anything?—I do not know.

THIRD DAY.

LIBRARY BUILDINGS, CAPE TOWN.

Wednesday, 3rd October, 1900.

PRESENT:

The Hon ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

THE DYNAMITE CONCESSION.

Mr. A. R. GOLDRING, Secretary of the Witwatersrand Chamber of Mines, submitted the following statement on behalf of that body:—

Mr. A. R. Goldring.

3 Oct. 1900.

"The Chamber of Mines objects to the above on the following three grounds:—

a. It is contrary to the Conventions of 1881 and 1884.

b. The terms of the contract under which the State monopoly was vested in L. G. Vorstman and by him transferred to the South African Explosives Company have not been fulfilled.

c. It is prejudicial to the public interest.

a. It is contrary to the Conventions of 1881 and 1884. As this is a matter of argument, the Commission is referred to the text of the Conventions and the contracts entered into between the Government of the South African Republic and L. G. Vorstman and the original concession granted to E. Lippert and cancelled in 1892.

b. That the conditions of the contract have not been fulfilled. The contract was concluded on the 25th October, 1893, in accordance with the regulations passed by the first Volksraad on 5th September, 1893, and provided (v. Article 6 of contract and therewith Article 10 of the Regulations), that the contractor was bound "within the shortest possible period and at the utmost within two and a half years" from the date of the contract, thus by the 25th April, 1896, to complete and bring into working order one or more factories for the manufacture of dynamite and other explosives of such quality and in such quantity as the needs and requirements within the S.A.R. may demand. This was not done. In October, 1896, when the factories were completed they had a producing capacity of only 80,000 cases, while the consumption was far in excess of that figure, *vide* evidence of J. P. Fitzpatrick, page 51, Proceedings of Industrial Commission Chamber of Mines publication and Volksraad Dynamite Commission's report of 22nd February, 1897, and the letters which passed between the South African Explosives Company and the Government in 1896.

c. That it is prejudicial to the public interest. First, a monopoly is established nominally as a State monopoly, actually as a private one, and while all the disadvantages of a monopoly, such as unduly high prices, prevention of free importation, discouragement of invention, are imposed upon the country and the mining industry particularly, the profit obtained therefrom accrues mainly to private individuals, viz., the shareholders of the South African Explosives Company and others. Unduly high prices and prevention of importation under permits. Under the monopoly importation is not allowed, except with special permission, which has never been granted, but were it possible dynamite No. 1 could be laid down at Johannesberg at, say, 40s. per case, exclusive of Transvaal duty, which immediately prior to the establishment of the monopoly amounted to 5d. per pound and 7½ per cent. *ad valorem*, *vide* evidence of J. P. Fitzpatrick, page 50; H. Jennings, page 220; and W. Hosken, page 439, proceedings of Industrial Commission, Chamber of Mines publication; also contract between Nobels and mining companies, published in Chamber of Mines annual report, 1893, page 99, and in this contract Nobels reserved the right to deliver at below 40s. if it suited them. Further, at the present time, contracts are, the Chamber is informed, held in South Africa for the supply in Europe of dynamite at 29s. per case; adding the various charges connected with importation, 11s. 1d. per case, this could be put down in Johannesburg (exclusive of Transvaal duty) at 40s. per case. The price charged by the monopolist company is 75s. per case, for though further reductions were discussed, they were not made, up to the time of the departure from the Rand.

The difference, therefore, between the price charged and that at which dynamite could have been imported was 35s. per case. The annual consumption is estimated at, say, 300,000 cases. Thus the mining industry is compelled to pay £525,000 more for dynamite per year than would be necessary if free importation under permits were allowed. Of this £525,000 the State is entitled to £112,000 (5s. per case as royalty, and 2s. 6d. per case in commutation of the share of profits). The difference between these two sums, namely, £412,500, represents a direct annual tax on the mines from which the State derives no benefit whatever, and as the consumption of explosives increases—as it must do with the opening of new mines—the burden on the mining industry will be greater. And it may be pointed out that such a tax as this is extremely undesirable on public grounds, seeing that it presses with especial severity on the poorer mines, and so tends to hinder the free development of the resources of the State. Moreover, apart from the question of the annual burden imposed on the mines for the benefit of the monopolist company, prior to August, 1899, the profits made by the company were sufficient to meet the entire cost of construction and equipment of the factories,

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and if, as the Chamber contends, the contract was not valid, these profits were illegally or improperly obtained at the expense of the mining industry and the State. The introduction of new explosives which may be better or cheaper than those at present used would naturally be discouraged by the monopolists, as their profit would thereby be diminished. This they are able to do under Article 7 of the contract, and as an instance in point, the obstacles placed in the way of a patented explosive named roburite may be cited. Further, the Chamber would refer to the report of the auditors appointed to examine the books of the South African Explosives Company and to the opinions of the lawyers appointed under resolution of the Volksraad, to advise whether the Company had fulfilled the condition of the contract or not respecting the non-payment by the company of its proper share of profits to the Government. On the grounds above given, the Chamber claims that in the general interest, and in that of the mines, the State monopoly should be abolished, and the contract granted under it cancelled; or, if that be not possible, that the contract should be expropriated, and that in either case free importation under permits, and subject to a reasonable import duty, should be allowed.

Cape Town, 2nd October, 1900.

NOTE.—For convenience sake dynamite No. 1 is spoken of, as it forms the basis of the contract between the Government and the South African Explosives Company, and throughout the controversy in connection with explosives in the Transvaal is the term which has been commonly used; but, as a matter of fact, the explosive almost exclusively used at the gold mines of the Rand is blasting gelatine. The statements regarding profits are, however, not prejudiced by this, as the cost of manufacture of blasting gelatine is only from about 7s. 6d. to pany charges 22s. 6d. more for the former than the latter."

Mr. WM. R. QUINAN, called and Examined.

Mr. W. R. Quinan.

289. (*Chairman.*) You have been connected for many years with the manufacture and sale of dynamite?—For about nineteen years.

290. What position do you now hold?—General Manager of the De Beers Explosive Works.

291. Has your experience been chiefly in America and Europe?—Altogether in America.

292. Where was your work carried on in America?—In California.

293. Do you know the amount of explosives that would be necessary for consumption on the Rand?—I know approximately.

294. What amount do you say it is?—About 300,000 cases a year.

295. Is that at present?—Yes.

296. Is that likely to be increased in the future?—I think it is, but of course it is difficult to say what the amount of increase will be.

297. Taking the estimate of the requirements at 300,000 cases per annum, could that amount be supplied from existing sources of supply, independently of what has been called the Nobel group?—I think it could be. I have made a partial list from memory of the various sources of supply, *i.e.*, of the American dynamite factories. Unfortunately I have lost my official list, but in the list I now produce I have made certain comments with regard to each factory:—

Pacific Coast.

The California Powder Works, address San Francisco, brand "Hercules."

Consolidated Giant Powder Co., address San Francisco, brand "Giant."

Judson Dynamite and Powder Co., address San Francisco, brand "Judson."

Cal. Vigorit Powder Co., address San Francisco, brand "Vigorit."

Peyton Chemical Co., address San Francisco, building.
Hamilton Powder Co., *branch* Nanaimo, British Columbia.

Lakes District.

Hancock Chemical Co., Dollar Bay, Michigan, Copper Mines.

Anthony Powder Co., Negaunee Michigan, Copper Mines.

Lake Superior Powder Co., Marguette, Michigan, Iron Mines.

Hamilton Powder Co., Hamilton, Canada.

Ætna Powder Co., Chicago.

Middle West.

Repanno Chemical Co., *branch* Ashburn, Missouri.

Independent Powder Co., Terre Haute, Indiana.

King Powder Co., Cincinnati, Ohio.

Repanno Chemical Co., Wilmington, Del., Delaware River.

Atlantic Dynamite Co., Dover, N.J.

Forcite Powder Co., Lake Hopatcong, N.J.

Phœnix Powder Co., Pittsburg, Pa.

Kirk, Arthur and Son, Pittsburg, Pa.

Hecla Powder Co., N.Y.

Nitro Powder Co., Kingston, N.Y.

REMARKS.

Pacific Coast Factories.

The Cal. Powder Works is the largest. Has a capacity of 1,500 cases per day of American dynamite of all kinds. Makes a good deal of gelatine dynamite, but very little blasting gelatine. Has a trade in Mexico, Central America, Alaska, Sandwich Islands, small trade in China, and formerly large trade in Australia. Their American trade covers the whole mining country west of Missouri River and also a portion of British Columbia.

The Giant Powder Company is the next largest. Has a capacity of about 1,000 cases per day. Makes a good deal of gelatine dynamite and some blasting gelatine, the latter mostly for the Government. Trade similar to that of the Cal. Powder Works.

The Judson and Vigorit are small concerns, but well equipped for making American dynamite and low grade gelatine compounds.

The Peyton is a new concern, not yet in operation.

The Hamilton is a small works, a branch of the Canadian parent works near Toronto, making black powedr and dynamite for the coal mines on Vancouver Island. It has a small trade in the neighbouring gold mines.

Lakes District.

The Hancock and Anthony are consumers' companies with a limited but good trade in the copper mines.

The Lake Superior makes dynamite and black powder for the copper and iron mines, also for stump blasting. No gelatines were made a few years ago, but they may have been taken up since.

The Hamilton is a large concern; black powder if one of their products—general trade. This company has certain affiliations with the Repanno.

The Ætna is an enterprising concern on Lake Erie, not far from Chicago. They have a large trade in Mexico. I think this is the only American company that has ever shipped dynamite to South Africa. I do not think this company is in the compact.

The Repanno Co., with its two factories, one on the Delaware River south of Philadelphia, the other at Ashburn on the Missouri River in the Middle West, is one of the largest and most important of the American Companies. Each factory has a capacity of about 1,000 cases a day. They make American dynamites of all kinds, but mostly low grade gelatine dynamites. They have facilities for blasting gelatine, but make very little, as the demand is small. Their brand of dynamite is called "Atlas."

The Atlantic Dynamite is one of the oldest factories in America, but a mistake was made in locating it in the hill country of New Jersey, where the manufacture of acid on a large scale would pollute the streams. The factory consequently purchases most of its acid. It has a capacity of about 500 cases a day. It makes a good deal of gelatine dynamite and some blasting gelatine for the Government. The factory is well equipped and managed.

The Forcite Company is located on a large lake in the same part of the State. This factory for a long time made a specialty of a high grade gelatine dynamite called Forcite, approximating blasting gelatine. At its best it was a very powerful and meritorious explosive, but it could not compete in the general trade with its rivals. This concern consequently has never made

any money, although at different times various men of ability, among others the mining magnate Jno. Mackay, have undertaken its business management. It is now run on normal American lines, having been taken over by the Eastern Powder Syndicate.

Of the newer and smaller companies I know very little. The most enterprising seem to be the Nitro at Kingston, N.Y., and the works at Pittsburg, Pa.

The Compact.

At the time the agreement with the Nobels was entered into in 1897, I was superintending the factory of the California Powder Works at Pinole. The Nobels had threatened to build a factory in New Jersey, in fact had bought land for the purpose. They proposed to make dynamite, gelatine, smokeless powder, sporting powder, all sorts of explosives in fact, and invade the American market with their products, unless the American companies would come to an agreement stopping competition in certain common markets. Our company was largely interested in the various products, gunpowder, sporting powder, smokeless, cocoa or brown powder, etc. At our Santa Cruz factory we were making large quantities of the latter for the Government and our prospects of large orders for smokeless powder were also good. The other source of supply for the Government was the works of the Duponts in the east, the powder kings of America—people who own an interest in nearly every powder company in the country, our own included. Leaving out the ethics of the matter, it seemed absolutely unfair that we (that is the Dynamite Department) should sacrifice our large and growing Australian trade to pacify the Nobels. In return they gave us Mexico, where their trade was already waning under the severe competition, and which we had to share with the other California companies. However, the fear that our Government trade in brown and smokeless powder would be ruined, overruled other considerations and some sort of agreement was patched up with the Nobels. I was known to be strongly opposed to the whole thing, and the matter was not discussed with me. As I left the country shortly afterwards I know very little about the details. All the California companies are in the compact in a loose sort of way. There is no pool or combination, but a general agreement as to prices, which is not kept very strictly. The larger companies in the east are also in the agreement with the Nobels.

The two Repanno Factories, the Atlantic Dynamite, Lake Superior, and the Forcite are included. These are strongly controlled by the smokeless powder interests. I am not sure as to the others, but there are certainly some companies outside of the compact, and others in it for convenience in home trade who, not having any smokeless or sporting powder interest to protect, have no fear of the Nobels, and would ship American dynamites to South Africa if the restrictions were removed. As the American demand for blasting gelatine is very small, I think there is none of these companies prepared to supply blasting gelatine in large quantities at present. Moreover in view of the fact that the De Beers Co. is known to be building a large factory here in South Africa to compete with the Nobels, the American companies would hardly be justified in putting up the additional plant required for making blasting gelatine on a large scale.

In regard to European factories outside of the Nobel Trust I know very little. Most of the English factories are owned or controlled by the Trust. I think, however, that the National Explosives Co. is still free. On the Continent, Nansen of Hamburg has supplied dynamite to South Africa. The mining engineers who have canvassed the European market would know better than I about this.

298. (*Chairman.*) I do not quite follow your remarks with regard to the compact in America. What was its effect?—I do not know the details.

299. Apart from the details, do you know what the substance of the compact was?—I know it took us out of Australia, that was the most interesting fact to me at the time.

300. That I can well believe, but what interests us much more is the nature of the compact with regard to the question of the ability of the American companies to supply South Africa?—They are able to do it, but some of the larger companies would not dare to offend the Nobels on account of their smokeless powder interests—they are afraid of the Nobels, but not in connection with dynamite or blasting gelatine. The larger companies are also interested in smokeless powder and sporting powder.

301. If the American companies are under the heel of Nobels with regard to smokeless powder, do you think they would venture to institute competition in blasting gelatine?—There are certain companies who do not manufacture smokeless powder, and these would be willing to compete. But these are the smaller companies which at present have not the plant for producing blasting gelatine on a large scale. *Mr. W. R. Quinan.* 3 Oct. 1900.

302. Then the net substance is this, that though there are sufficient factories in America to supply the Rand, you are doubtful whether the great number of them and the largest of them would not be afraid to institute competition?—That is the point, especially with regard to blasting gelatine. The smaller companies are prepared to make ordinary American dynamite, but are not prepared to make blasting gelatine, and the larger companies would not dare to compete under the circumstances.

303. Supposing there were a necessity to supply a very large quantity of blasting gelatine to the Rand next year, are you doubtful whether the American companies would be able to supply it?—I am very doubtful about it. I hardly think they would, because the smaller companies do not have the plant, and they would not put it up unless they were certain of securing the future trade.

304. I think we have your opinion now as regards America, you do not profess to know with any accuracy as regards Europe or other parts of the world?—No.

305. As a fact, is blasting gelatine the explosive that is principally used on the Rand?—So I hear. I believe about ⅞ths of explosives used up there is blasting gelatine.

306. Do you know the conditions under which mining is carried on at the Rand?—Fairly well, from conversations I have had with the mining engineers, but I have never been there.

307. Are you acquainted with the nature of the ground and the ores that have to be treated at the Rand?—In a general way, from conversations with mining engineers.

308. Can you give any opinion as to whether blasting gelatine is necessary or could any other explosive be used?—I think it could be largely replaced by a more economical explosive. It seems to me that in stoping, ore-getting, and so forth, a much cheaper explosive could be used with advantage. Not only would it do the work quite as well as blasting gelatine, but it would break up the ground in a manner which would involve less waste, the sorting would be easier and a higher grade ore would be more easily got to the stamps.

309. What do you suggest would be a suitable explosive to be largely used there in place of blasting gelatine?—I think that 40 per cent. American dynamite would take the place of a large proportion of the blasting gelatine used. Then in certain other work I think a cheaper grade of gelatine, *i.e.*, gelatine dynamite, could be used, that is used more or less now. I estimate that about 70 per cent. of the consumption could consist of these two grades; that is a rough guess, of course, but I make it from a fairly careful consideration of the subject. There would thus be 30 per cent. of the consumption reserved for blasting gelatine for shaft sinking, in which it is of great advantage, and for which purpose I think it could hardly be competed with.

310. Now, as regards the 40 per cent. American dynamite, do your observations as to ability of the Americans to compete with Nobels equally apply to that as to blasting gelatine?—They are all equipped for making the 40 per cent. American dynamite. It is, in fact, the greater part of their production, and it would be very much easier to get a supply of that than of blasting gelatine.

311. Do you mean that the smaller companies not in the compact would be able to supply that?—Yes.

312. But the same difficulty that the larger companies have in competing with Nobels would exist in this class of dynamite as well as blasting gelatine?—Certainly.

313. In your opinion could the supply of the smaller companies be adequate for the Rand?—I think so.

314. You mention 40 per cent. dynamite and gelatine dynamite. Will you explain the difference?—Gelatine dynamite is a cross between blasting gelatine and dynamite. Into the gelatinised nitro-glycerine is worked a certain amount of raw material, wood pulp, and nitrate of soda, in the kneading machines, so it is fairly termed gelatine dynamite. The percentage of nitro-glycerine varies in Europe from 50 to 65 per cent. In America we go as low as 35 per cent., and we go as high as 70 per cent. Then the 40 per cent. dynamite is not gelatinised, it is simply the nitro-glycerine with the dry materials which take the place of kieselguhr in ordinary dynamite.

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In dynamite proper there is no chemical union between the absorbents and the liquid.

315. What is the absorbent in the 40 per cent. dynamite?—It is wood pulp and nitrate of soda, ground to a fine powder. This powder also acts as an absorbent for the nitro-glycerine, but, of course, holds very little.

316. Can you tell us what the price of these three commodities is at present time?—I have made some calculations on the subject.

317. You mention kieselguhr dynamite. Does that compete with the three classes you have referred to?—No, sir; it is out of the race if there is anything like close competition. Kieselguhr dynamite is of no account.

318. Why do you say that?—Because it is out of date as an explosive. It carries 25 per cent. of dead matter, and you do not get quite the full force of the nitro-glycerine. There are various qualities which militate against its usefulness. It cannot compete with the American article, in which nothing is put that does not contribute towards its effectiveness. All the ingredients in the American dynamite take part in the work, and the result is that the nitro-glycerine, being a costly article, it is easier to get a unit of energy at a lower cost by that principle. Then as regards the question of safety in packing. The American dynamite has made a very remarkable record in that regard. We have been making dynamite for eighteen or nineteen years on the Pacific coast, and we never had a packing-house accident, and never had a mixing-house accident that could not be accounted for, the reason being that the wood pulp is absolutely bland, and has no grit of any sort in it; consequently there is no danger from friction in handling. We can also manufacture it cheaper, because we can use larger gangs of men, as the risk is very small, and we also use machines for packing it.

319. What is the reason that blasting gelatine is most suitable for shaft sinking?—On account of its greater energy. It carries a very much larger percentage of nitro-glycerine, and thus you get a very perfect explosive. Nitro-cotton is slightly deficient in oxygen, but nitro-glycerine has oxygen slightly in excess, and you can make the two balance each other very exactly in blasting gelatine. Wherever you want great energy, blasting gelatine will hold the field. It is the most powerful explosive known that is in general use.

320. Now coming to the prices?—There are two schedules that I have prepared, one showing the factory cost of 100lbs. of 40 per cent. American dynamite, and the other showing the cost of raw materials and of our principal products for that year. These are taken from my official reports to the directors of the Californian Powder Works for the year 1898. The cost of the dynamite, 5·90 cents per pound, is a little under 12s. a case. The cost is low, as the materials were cheap for that year.

Cost 100 *Pounds* 40 *per cent. Powder*—1898.

40 pounds Nitro-Glycerine at 10·355 cents -		4·1420 cents.*	
59 „ Pioneer Pulp	„ 1·35 „ -	·1215	„
6 „ H. Mag.	„ 1·186 „ -	·0712	„
45 „ Nitrate Soda	„ 1·612 „ -	·7254	„
		5·0601	„
3·03 paper at 3·28	„ ·0994 „		
1·605 paraffine at 3·56	„ ·0572 „		
		·1566	„
		5·2167	„
gives 103·9 pounds powder - - - - -		5·0209	„
Labour - - - -	·750 cents.		
Boxes - - - -	·175 „		
Incidentals - - -	·187 „		
		1·112	„
		6·133	„
Less Credits - -		·231	„
Cost of Powder - -		5·902	„

or about 12s. a case.†

* Of an American dollar. † A case containing 50 lbs.

The following is an estimate of the factory cost of blasting gelatine based on the same cost of raw material:—

Cost 100 *Pounds Blasting Gelatine.*

93 Nitro-Glycerine at 10·35 cents - - -		9·625 cents.	
7 Nitro-Cotton „ 25 „ - - -		1·750	„
		11·375	„
Labour - - - -	2·50 cents.		
Boxes - - - -	50 „		
Incidentals - - -	50 „		
		3·50	„
		14·875	„

or about 30s. a case.

This calculation may be out somewhat at present prices of raw materials. I have not had time to study up the subject, but I know in a general way that they are higher than in California in 1898.

Cost of 75 per cent. Kieselguhr Dynamite, 100 *Pounds.*

75 N.-G.	10·35 - - - - - - - -	7·762
25 Kieselguhr	3· - - - - - - - -	·750
		8·512

Difference in cost of material between blasting gelatine and 75 per cent. kieselguhr dynamite 2·86 cents per pound, or about 5·8 shillings per case.

Taking into account the extra work and manipulation required for blasting gelatine, the difference at the outside would be 7s. 6d. per case.

321. (*Chairman.*) Is that the actual cost of production at the works?—That is an estimate based on a certain cost of the raw materials. I have made a liberal allowance for the price of labour and have also included the outlay in boxes and incidentals.

322. Were your works near any port?—Yes, San Francisco Bay. We had both railway and water communication from the works.

323. At what price could you deliver f.o.b. at San Francisco?—The cost of carriage was very small, I think it was 7 cents. per 100lbs., but I am not sure; perhaps that sounds too big.

324. Would we be safe in taking 6d. as a maximum?—I certainly think so.

325. Now, we have the cost of production at the factory and the cost of transit to the ship. If you had orders under ordinary circumstances, what would you ship f.o.b. at San Francisco for, in order to secure a profit?—I had nothing to do with profits. We sold dynamite at all prices. At one time we sold it at 7 cents. per lb. during a period of very severe competition. That was 40 per cent. dynamite.

326. That would be 14s. a case roughly?—Then, when competition was not so painfully acute at what would you sell it?—We got nine to ten cents. per lb.

327. (*Mr. Ashmore.*) This 30s. which you quote, is that for high grade explosive?—It is as high as we can make it—93 blasting gelatine.

328. And the 75 per cent. is kieselguhr dynamite?—Yes. The grade of blasting gelatine depends on the quality of the nitro-cotton, we make it 93 if we can.

329. How does that compare with the strength of the blasting gelatine used on the Rand now?—It is just the same.

330. (*Chairman.*) Now we have the cost of production and of transit to San Francisco, but we have not got your opinion as to the fair trade price f.o.b. If you cannot give that to us we won't press you?—I think the manufacturer should make a fair profit.

331. What do you consider a fair profit?—I think on explosives there ought to be 30 per cent., because there is a great deal of risk and liability to sudden losses.

332. (*Mr. Ashmore.*) Does the price of materials that are used fluctuate very much?—You have to consider the different articles separately. I have known glycerine to vary between 10 to 17 cents, that is probably the greatest variation. With regard to sulphur, which we use instead of pyrites, we have bought damaged cargoes at as low as 11 dollars per ton, but the usual price was about 18 dollars per ton. It was a little bit higher than that during 1898. Nitrate of soda—the highest price was about 2¼ cents per lb., but that year it was very

cheap, a little over 1½ cents, which is the lowest I have known it to be.

333. Taking the prices of the raw material at their normal market rates, what would you say a fair cost of the product per case ought to be?—Forty per cent. dynamite never ought to run over 14s.

334. And blasting gelatine?—About the same proportion, which should be about 35s. per case. That would be the maximum cost of making it.

335. Is the manufacture of these three commodities feasible in South Africa?—Perfectly so.

336. How much of the requisite raw material is procurable from South Africa?—I have written an answer to that, which I will read if you will allow me. It is as follows:—

MANUFACTURE IN SOUTH AFRICA.

The manufacture of industrial explosives is perfectly feasible in South Africa, though none of the raw materials is procurable here, except perhaps kieselguhr, which is to be found in all parts of the world. I do not know of any deposits that have been proved suitable. The principal raw materials are nitrate soda, which comes exclusively from Chili, on the west coast of South America; nitrate potash, or saltpetre, which comes chiefly from India, although most of the commercial article is made indirectly from the soda salt. This potash saltpetre is not used to any extent nowadays in the manufacture of industrial explosives. The principal use of the nitrate soda is to produce the nitric acid required to nitrate the glycerine, cotton waste, etc. The nitrate is decomposed with sulphuric acid.

Small quantities of nitrate of potash and soda have been found in various parts of South Africa and particularly in the Transvaal, but no deposits worth working have been found, nor is it at all likely.

The sulphuric acid is obtained from either sulphur or pyrites. Neither has been found in any quantity in South Africa suitable for the purpose. Pyrites must be of a certain quality, and be landed cheaply at the factory to compete with sulphur. Mines will doubtless be discovered, but until the country is developed and railway facilities have been much cheapened the cost of delivery will be prohibitive. In the meantime a factory near the sea coast has the best chance of getting its supplies at a reasonable cost. Sulphur is obtained chiefly from Sicily and Japan. Australia, New Zealand and America produce a little from mines, and England a small amount from alkaline waste. This is too high in price to be used for acid.

Glycerine is a by-product from soap and candle manufacture. France, Belgium, Australia and the United States are the largest producers of the crude. Germany and the United States are the largest refiners, though nearly all the European countries produce some. There is none produced in South Africa though it is a cattle country. The grade required for dynamite is a special one. It is refined but not deodorised or bleached. It contains more real glycerine, and has a higher density than the ordinary glycerine of the drug trade.

Wood pulp for dynamite is obtained either in Germany, Norway, or the United States. It varies greatly in absorbent powder depending on the nature of the wood and the process of manufacture.

In regard to the location of a factory supposing that there are no determining political factors, and that the usual open door policy of England is followed, the best situation is near the sea coast. The materials have to be imported, and the railway freight on the raw material is saved. There is also a better chance to export the finished product and avail onself of the various railway routes, so as to get competitive routes instead of being dependent entirely upon one line. There is another important consideration. In the manufacture of nitric acid there is a large amount of refuse acid sulphate of soda which will pollute streams if allowed to run into them or poison land if distributed over its surface. The only safe disposition of it is to run it into the sea or some large body of water. Inland, the alternative is to find natural or to make artificial reservoirs and impound it. In time these will fill up and new ones must be provided. The soil in the neighbourhood is rendered absolutely sterile. In a country like the Transvaal where land is plentiful and cheap this matter is not very serious except on the score of expense.

337. Mr. Curlewis suggested that witness should state the difference in the weight between the raw material and the article produced?—I have made that calculation, and it amounts to about 3 1/10 lbs. for blasting gelatine. My schedules are as follows:—

6. *Rough Schedule for Materials for 90 per cent. Gelatine.*

90 Nitro-Glycerin	45 Glycerin		45 Glycerin.
	118 Nit. Acid	170 Nit. Soda	170 Nit. Soda.
		188 Sulp. Acid	63 Sulphur.
	197 Sulp. Acid		67 ,,
			345
10 Nitro-Cotton.	6 Cotton Waste		6 Cotton Waste.
	33 Nit. Acid	48 Nit. Soda	48 Nit. Soda.
		53 Sulp. Acid	18 Sulphur.
	66 Sulp. Acid		23 ,,
	Per 10 lbs.		95

100 lbs. 90 per cent. Gelatine requires of raw material:

90 N.-G.	345 pounds.
10 G. C.	95 ,,
Total	440 ,,

There is a deduction from this in large works. A large part of the sulphuric acid used in nitrating the glycerine and the cotton is recovered, reconcentrated, and used over again, lessening the amount of sulphur required. The saving would be as follows:—

Saving by Acid Recovery.

For N.-G. 90 per cent. of 67 lbs. Sulphur	60 lbs.
,, G. C. 85 ,, ,, 23 ,, ,,	20 ,,
	80 ,,

440 − 80 = 3·60

100 pounds of 90 per cent. gelatine requires 360 pounds raw material for its production.

Schedule of Material for 75 per cent. Kieselguhr Dynamite 75 N.-G., 25 Kieselguhr.

75 Nitro-Glycerin	37 Glycerin		37 Glycerin.
	97 Nit. Acid	139 Nit. Soda	139 Nit. Soda.
		154 Sulp. Acid	52 Sulphur.
	162 Sulp. Acid		55 ,,
25 Kieselguhr			25
			308
Deduct for saving in Recovery of Sulp. Acid 90 per cent. 55 Sulphur			49 Sulphur.
100 lbs. Dynamite requires			259 lbs. raw material.

Schedule of Material for 40 per cent American Dynamite. 40 N.-G. 45 Nit. Soda. 15 Wood-pulp.

40 Nitro-Glycerin	20 Glycerin		20 Glycerin.
	52 Nit. Acid	74 Nit. Soda	74 Nit. Soda.
		82 Sulp. Acid	29 Sulphur.
	88 Sulp. Acid		31 ,,
45 Nitrate Soda			45 Nit. Soda.
15 Wood-pulp			15 Wood-pulp.
			214
Deduct for saving in Recovery of Sulp. Acid 90 per cent. 31 Sulphur			28
100 lbs. Dynamite requires			186 lbs. raw material.

Schedule of Materials for Nitro-Glycerin.

100 Nitro-Glycerin	50 Glycerin		50 Glycerin.
	132 Nit. Acid	189 Nit. Soda	189 Nit. Soda.
		210 Sulp. Acid	71 Sulphur.
	220 Sulp. Acid		74 ,,
			384
Deduct for Saving in Recovery of Sulp. Acid 90 per cent. 71 Sulphur			64 Sulphur.
Raw Material required for 100 lbs. N.-G.			320 lbs.

Schedule of Materials for Nitro-Cotton.

100 Nitro-Cotton	60 Cotton Waste		60 Cotton.
	330 Nit. Acid	480 Nit. Soda	480 Nit. Soda
		530 Sulp. Acid	180 Sulphur.
	660 Sulp. Acid		230 ,,
			950
Deduct for Saving in Recovery of Sulp. Acid 85 per cent. of 230			200
Raw Material for 100 lbs. Nitro-Cotton			750

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As an offset to this large amount of raw material and consequent cost of the nitro-cotton there is this advantage in combining the manufacture with that of nitro-glycerine. A weaker nitric acid may be used for the nitro-cotton, which enables the manufacturer to sort the acids so as to use only the best and strongest for nitro-glycerine and so get a better yield.

338. The De Beers factory, of which you are at the head, is it in an advanced stage of construction?—No, it is not. We have been very much delayed and hampered, but we are hard at work. We have most of our administration buildings up, but have made very little progress with the factory buildings. We are going forward as quickly as we can.

339. You stated that the manufacture of these commodities is quite feasible in South Africa, but you are not yet prepared to manfacture?—No, and won't be for some time. I have brought here for your information a lot of testimonials in regard to American dynamite, and which were got up with this idea: The inspector of explosives, not knowing American dynamite, brought up the question whether or not it was a meritorious article with regard to safety and reliability, and there is also a good deal of testimony as to its efficiency. I have here about thirty letters from engineers all over the world. I have also brought photographs of an American dynamite factory showing the different processes and apparatus.

340. (*Mr. Loveday.*) Do you anticipate any difficulty in procuring your raw materials?—None whatever.

341. Do you think the sources of supply will be sufficient?—Oh, yes.

342. Will the raw material cost much more delivered in South Africa than it generally costs delivered in Europe?—I cannot answer positively, but I cannot see why it should. Glycerine should be a little higher, but it seems to me we should get as good rates for sulphur and nitrate of soda, which constitute the principal raw materials required.

343. (*Mr. Ashmore.*) You are going to manufacture for De Beers Co. alone?—Yes, but also for the general trade.

344. Can you supply them as cheaply as they can be supplied from abroad?—Yes. We expect to save a considerable amount. We are protected by the 12s. 6d. duty.

345. (*Mr. Loveday.*) What do the De Beers pay for their dynamite now?—I know, but I cannot tell you. I produce an answer to a cable which I sent to New York, but I do not lay much stress upon it. I am afraid the fine Italian hand of the Nobels is concerned in it. I think some of the mining engineers purchased dynamite and blasting gelatine during the war at much better prices from Europe. I know as gossip what they have paid, but I think you can get better evidence than mine on that point.

346. The cablegram you referred to was in response to one which you sent two or three days ago to New York?—Yes. I asked the price of 90 per cent. blasting glycerine, f.o.b. New York, also at Cape Town; information wanted for Imperial Government. I put that in because I did not think they would have made a bid unless I mentioned it. These Eastern companies are hand and glove with Nobels.

347. You do not attach very much weight to the reply?—No, it is as follows:—"32 cents per lb. f.o.b. New York, 33 cents f.o.b. Capetown." Schrader is the manager of the Atlantic Dynamite Company.

348. You have said that in your opinion you cannot rely much upon this cable. Will you state why?—In the first place he took three or four days to answer, and I think he has had regard to the agreement with Nobels. My reason for thinking so is that I know mining engineers have had better prices than that direct from Europe, but you can get that information easily enough.

The witness also put in the following documents:—

Cost of Powder Materials for Year 1898—
Cents Per Pound.

Sulphur - - - - - -	1·016
Nitrate Soda for Nitric Acid -	1·5314
,, ,, Hercules Powder -	1·612
Petroleum, per gal. - - -	3·028
Cotton waste (delivery) - - -	6·89
Sulp. Acid - - - - - -	0·43
Nit. Acid - - - - - -	3·38

The Question of Cheaper Explosives for the Rand.

I understand that about seven-eighths of the explosives used on the Rand in the last few years was blasting gelatine. The influences bringing this about were two; first, the lack of economy in the kieselguhr dynamite, the only variety of dynamite that was available, and, secondly, the high price fixed for blasting gelatine, which made it the most profitable product for the factory.

From my conversation with the mining engineers of the Rand and my own experiences in America, where I am familiar with the grades of dynamite which have proved most economical in the mines of Colorado, Utah, Idaho, Montana, New Mexico, Arizona, and California, I am satisfied that a large proportion of the blasting gelatine used on the Rand can be economically replaced by a 40 per cent. American dynamite. Some such grade as this would be an especial advantage in stoping and ore-getting. The holes being shallower and the work closer to the veins or beds, there would be less waste rock handled, the labour of sorting would be lightened and the ore going to the stamps would be of higher grade. I think the same grade of explosive or one a little higher of the same nature could be used in driving most of the drifts and tunnels. In shaft sinking I think that blasting gelatine gives an advantage owing to its great energy and good gases that the mines could not afford to forego.

As a rough guess, I should say that 70 per cent. of the consumption should be of American dynamite and gelatine dynamite and not more than 30 per cent. of blasting gelatine.

In regard to kieselguhr dynamite I regard it as absolutely out of the race. It cannot survive if there is competition and the question of economy is studied. I draw this conclusion from our experience in America where it was exploited by powerful corporations with the prestige of Alfred Nobel's name to uphold it. As soon as the legal restrictions were broken down and explosives had to be sold upon their merits, it was driven out of the field by better products. The reason of this is plain. It carries 25 per cent. of inert, dead matter which, instead of assisting, acts as a clog upon the nitro-glycerine. In American dynamite the base is active. All the ingredients contribute to the energy, while they serve as good if not a better purpose as a vehicle for the liquid than kieselguhr. These active ingredients cost less than kieselguhr which has been properly prepared for dynamite. The N. G. being the expensive element, it follows that a unit of energy can be produced much more cheaply on the American plan. There is another advantage which has a bearing upon the manufacture. It has been found that the introduction of bland, resilient absorbents like wood-pulp has lessened the danger of packing the dynamite into cartridges, so that packing house accidents are almost unheard of in America. There has not been one on the Pacific Coast for 19 years, although millions of pounds of American dynamite have been made there. The packing can therefore be done more cheaply with larger gangs of men in the same house.

Process of Manufacture.

The process of making dynamite, either American or Nobel's (Kieselguhr) is very simple. It consists first in the manufacture of the nitro-glycerine, its purification, the preparation of the dry materials, the mixing of the liquid with the dry materials (called collectively the dope), the packing of the mass into cartridges and putting the latter into wooden cases usually containing 50lbs.

The preparation of the dope consists in drying, grinding, sifting, and incorporating the different ingredients in proper proportion beforehand. The incorporation is done in rolling barrels or special mills or even by hand.

The mixing of the dope with the liquid is done in large lead-lined wooden vats with wooden shovels, and by rubbing the mass finally through wire sieves. In some American factories a large wheel mill is used (like the old gunpowder mill, except that it is made of wood covered with lead). This wheel mill saves the preliminary incorporation of the dope in separate apparatus. It is very effective and quick in operation, but makes a great deal of dust. In some factories the dynamite, after coming from the mill, is run through power sieves to granulate it and fit it better for packing.

The packing into cartridges is mostly done with wooden machines that pack from 10 to 24 at a time. The paper cases are made and dipped in paraffin beforehand. The usual length of cartridge is 8 inches. Kieselguhr dynamite may be handled in very much the same way, but being sticky, it is not easily packed into such long

cartridges. In Europe metal machines are used that pack one cartridge at a time, the cost of packing American is less than half that of Kieselguhr dynamite.

Nitro-Glycerin.

Nitro-glycerin is made in vessels of lead or iron, which are kept cool by water circulating through lead or iron coils. The mixture of sulphuric and nitric acid is first introduced into the vessel and then the glycerin in a small stream. A vigorous agitation of the mixture is required to prevent local heating. The rapidity with which the glycerin can be safely run in is regulated by a thermometer which indicates the intensity of the chemical action. In America for good reasons we prefer iron or steel vessels and mechanical agitation. In Europe they use lead vessels and agitate with compressed air. The American charges are generally larger, a ton of nitro-glycerin being often made at one operation. The European charge is rarely more than half that amount, and is often much smaller. When the nitration is finished the whole charge is run into a vessel called the separator. Here the N.G. separates and comes to the top of the acids, which are drawn off and recovered. The N.G. is drawn into the preliminary wash tanks and washed with fresh and alkaline waters till it is free of acids. It is then flumed to the final wash tanks, where it is repeatedly washed with fresh and alkaline water till it will stand the heat test. It is then filtered through layers of cloth and salt to get rid of the soda mud, lead sulphate, and other impurities. It is finally flumed to a store tank where it is drawn off as required and taken to the mixing houses to be made into dynamite or gelatine.

Gelatines.

These differ from true dynamites in that the nitro-glycerin undergoes a semi-chemical union with the other ingredients or ingredient. In practice nitro-celluloses are used, though other compounds, such as nitro-starch, may be used. Nitro-cotton is distinguished from ordinary or military gun-cotton by being soluble in a mixture of alcohol and ether.

Glycerine	10·613
Nit. Lime	0·50
Pioneer Wood Pulp	1·347
German No. 2 „	1·7
German No. 1 „	1·7
Hudson R. „	1·8
Carb. Magnesia	7·062
Heavy Magnesia	1·186
Hank Guncotton Dry	28·335
Hydro C. „ „	25·00
Nitro-Glycerin	10·355
Paper	3·28
Paraffin	3·56
Soda Ash	1·28
Coal	·30
Champion Powder	2·96
Hercules Av.	6·16
„ 40 per cent.	5·90
Boxes, per 100 lbs.	17·53

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The variety best suited for the making of gelatine contains more than 11 per cent. of nitrogen, and must be very pure and free from unconverted cotton. It is quite an art to make just the right variety without heating the acids which is often done, but is apt to cause loss of yield. The resulting nitro-cotton must be pulped, reduced to almost a powder, and washed until it is perfectly stable as indicated by the heat test. It is then dried.

The gelatinization or union of the nitro-cotton with the nitro-glycerin, whereby the latter is reduced to a jelly, is brought about by heat, as at ordinary temperatures the two elements are neutral to each other. The heating is done in jacketed vessels, hot water being circulated in the jacket. The limit of temperature is about 125deg. F. When the union has taken place the mass is kneaded by a powerful machine for about an hour, either in the same apparatus or in a special one. The mass is then taken to the cartridge forming machines. These are called sausage stuffers in the United States. The mass is forced by a revolving screw out of a nozzle in the form of a round rod. This is cut up into short lengths and wrapped with parchment or paraffined paper.

Gelatine proper or blasting gelatine contains nothing but nitro-glycerin and nitro-cotton. The proportions vary from 90 N.-G. and 10 nitro-cotton to 93 by 7 nitro-cotton. As nitro-cotton is more expensive than N.-G. it is an advantage to use as little nitro-cotton as will thoroughly gelatinate the N.-G.

Gelatine dynamite and gelignite are diluted gelatines. The N.-G. is partly gelatinated and partly held by absorbents such as wood-pulp, a certain amount of nitrate soda being put in to oxidise the carbon of the wood-pulp. These extra ingredients are added during the kneading.

The percentage of N.-G. varies from 50 to 65 per cent. in the European products. In America it has a greater range, from 35 to 70 per cent.

Gelatines differ from dynamites in being more plastic and adhesive. They also have greater density. They cannot be packed like dynamite into paper shells already made, but must be forced out of a nozzle, cut up and wrapped.

They are more expensive to make on account of the necessity of heating, which adds to the danger; the longer manipulation; the greater difficulty of making into cartridges, and the power required for the kneading and cartridge forming.

The special machinery and apparatus required also make the plant more expensive.

ROBURITE.

William Charles Thomson, the next witness to be examined, submitted the following statement:—

Mr. W. C. Thomson.

I, William Charles Thomson, to whom the Roburite Explosives Co., Ltd., granted, for certain substantial considerations, the sole rights of importing, manufacturing, and selling their explosive in South Africa, make the following declaration:—

On the 18th January, 1890, patent rights were granted me at Pretoria, and since then these rights have been kept alive by the payment of the prescribed fees as required.

During the years 1890-91-92 I made repeated attempts to introduce the material, but was warned and threatened with heavy penalties, both by Lippert's agents, and the then chief of the Customs Department, Mr. Kapteyne.

After the cancellation of Lippert's Monopoly, the Government, after repeated petitions, memorials and personal interviews at Pretoria, yielded to a petition signed by 26 mine managers, directors, and secretaries of companies on the Rand, ordered for stock 300 cases, but instead of acting on my advice, and stocking only sizes suitable for rock mining, insisted on having every size that we made, viz., 21 sizes, three-fourths of which were afterwards found to be unsuitable, as I had warned the agent they would be. The suitable sizes were disposed of at once, and more demanded.

The agent would order no more till he had disposed of the stock on hand. I then offered to take back to Port Elizabeth over 200 cases, and replace them with suitable sizes at our own cost. This I was informed could only be permitted on condition that we paid the then nominal import duty of 37s. 6d. per case. To this I even consented, provided a promise was given that a supply equal to the demand would in future be kept in stock. The Government agent, however, refused to give any such promise, the object being really to have a quantity of roburite in the magazine which he could point to as being unsaleable.

Early in 1895 the Chamber of Mines presented a memorial to the Volksraad asking for some amelioration with regard to the dynamite monopoly, pointing out that by the monopoly the mines were debarred from availing themselves of any new or improved method of blasting. The memorial was laid before the House, and Mr. Vorstmann called upon for his reply, which was to the effect that as soon as an explosive could be manufactured at a price lower than the present price of dynamite, he was prepared to treat with the holders of patents with regard to the manufacture and sale of such explosive, so that the mines should have the benefit accruing from such invention.

After the publication of this public statement I

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interviewed Mr. Vorstmann at the office of the monopolist company at Pretoria. I made certain proposals to him, with a view of his submitting them to his directors, which he promised to do. A long delay followed, and only after repeated writing I received a brief letter on the 5th September, 1899, stating that the directors of the company declined to take into consideration any proposals for the introduction of roburite. Further letters were sent by me calling attention to his promise to the Raad, but all to no purpose.

Some time afterwards—early in 1896—Mr. Powell, then manager of the Cassel Coal Co., at Springs, being favourably impressed with the effects produced by roburite in some trials that had been made in his mine, made an offer to the Johannesburg manager of the Concessionaire Company to take all the stock of unsuitable sizes off his hands, as he could use them for coal by breaking them up. The reply he got was that while the company was willing to get them taken off their hands, he would require to give an undertaking never again to ask for roburite. Mr. Powell did not feel justified in merely obliging the company. Seeing that he wished to continue to use most suitable explosive for coal, declined these conditions, and so the matter ended.

As a British subject relying on my Government to obtain justice for me under the terms and conditions laid down in the London Convention of 1884, I have gone on spending money (now several thousands of pounds sterling) and the best years of my life, I look to the British Government for a just compensation, seeing they have culpably permitted the violation of a solemn convention which British subjects relied on.

W. C. THOMSON.

The *Witness* added: During the whole of this period, that is from early in 1890 to 1898, since, in fact, the date I took out patent rights, I have spent at least half of my time in Johannesburg and Pretoria endeavouring to get roburite introduced by fair means, not by bribery. I have never gone the length of that. I have been at an outlay of a little over £8,000, to say nothing of my time or of the loss I have been at. Had there been no monopoly, the explosive for which I have patent rights is not one that would supersede dynamite altogether, but it could be used by a very considerable number of mines with great advantage, that is, leaving aside the element of safety altogether, which every expert knows roburite possesses. I would not have spent all this time and money but for the strong belief which I entertained that the Convention of 1884 would give me, as a British subject, equal rights with any other naticnality.

349. (*Mr. Ashmore.*) Is this a British manufacture?—It was manufactured in Cape Colony. We could not manufacture it in the Transvaal, because it was not permitted. I was warned and threatened if I attempted to do so.

350. Where did you get the raw meterials for your explosive?—From South America principally. There is no sale for it in the Cape Colony. It was for the Transvaal that I got the right. Very few explosives are used outside of the Rand.

351. Could it be produced without limit as to quantity?—Oh, yes; it can be produced in any quantity.

352. (*Chairman.*) How much could your company produce at the present moment?—At the present moment we have got no large machinery, but we could produce 1,000 to 1,500 cases per month. It is, however, a very simple matter to increase that; in the course of six months we could erect a factory big enough to turn out 50,000 cases.

353. To what extent could it replace blasting gelatine?—I think it could replace about a quarter of blasting gelatine.

354. Could the work be done better with roburite than with blasting gelatine?—A great deal of blasting is done on the Rand in the shape of prospecting and surface work, for which roburite is very much better suited. It is a slower explosive, and does not shatter the coal so much, and gives a larger value, weight for weight. One pound of roburite will do better work than 1½lbs. of dynamite, by the saving of the coal. That has been proved time after time. I have any quantity of testimony to that effect.

355. (*Mr. Loveday.*) Is Mr. Powell still in the Transvaal?—The last time I saw him was about fifteen months ago in London.

356. Would he be prepared to verify that statement?—I should say so, but there are others in the country who could be got to do so.

357. It would be advisable to supply that testimony?—I gave the names of several people to the Industrial Commission who could support my testimony, and I can give you a list of other names. I daresay I could give you the names of people in Cape Town.

358. (*Chairman.*) Are there any in Pretoria?—If I was in Pretoria or Johanesberg when you were sitting there I daresay I could find plenty of people to back up my statements. Mr. Stark, the manager of the quarry here, could also do so.

359. (*Mr. Loveday.*) I suggest that you get some affidavits from these people and hand them in?—That would be a very difficult thing if you require original affidavits.

(*Chairman.*) Copies of affidavits would be no use. If there is anybody you wish to call we must see the gentleman himself.

JAMES PERCY FITZPATRICK, called; and Examined.

Mr. J. P. Fitzpatrick.

360. (*Chairman.*) I think you represent Messrs. Eckstein and Co.?—Yes.

361. You have lived and worked in the Transvaal for many years?—Yes, since 1884.

362. I think you wish first to say something about the Dynamite Concession. Do you object to that Concession?—Distinctly.

363. What are the grounds chiefly for doing so?—It is a monopoly which determines some of the most important conditions of mining. I leave out of course all reference as to how it was obtained or its validity; that can be dealt with by others. The price is artificially maintained and is very excessive. We are practically compelled to use such explosives as they may dictate, and all enterprise in the direction of discovering new explosives is killed. We have made many suggestions about new explosives, and we found the men on the Rand particularly fertile in making improvements. There are many devices introduced up there which are now in use all over the world in every department of mining, and there is no reason why we should not have made improvements here either in efficiency or cheapening the production, but of course it is quite impossible while the monopoly lasts.

364. You state here that this Concession is a breach of the Conventions of 1881 and 1884?—Yes, that is a legal matter; we have always held that.

Mr. Advocate Curlewis, by permission of the Commission, placed a copy of the Chamber of Mines statement before the witness in order to facilitate matters.

(*Witness*, continuing.) I need not refer either to whether the contract has been fulfilled or not; that would only take up the time of the Commission, and has already been dealt with by the Industrial Commission.

(*Mr. Curlewis.*) The evidence of Mr. Fitzpatrick before the Industrial Commission was first of all as to what quantity of dynamite was consumed in 1896 by the mines, and it will be proved that the factory was only able to produce 80,000 cases.

(*Witness.*) In October, 1896, when the factories were said to be completed the producing capacity was only 80,000 cases, but the consumption was between 160,000 and 200,000 cases per annum, so that they certainly could not satisfy half the demand.

365. Can you give us the figures of 1898 and 1899 as to the supply and the requirements of the mining industry?—Well, the Dynamite Company made no returns. The last returns which the mines made are for 1898, and appear in the annual report for that year. There have been no returns received from the mines subsequently.

366. No report was printed in 1899?—No, but I can tell you pretty closely what the consumption was. At the end of 1898 the sales of the factory were about 25,000 cases monthly, and I have been informed by employees and others, in talking about the matter of the Dynamite Company, that the sales often exceeded 30,000 cases monthly. I think you can safely take it that it is nearer 350,000 cases, for the greater part of

last year, than 300,000. I do not know what the consumption for the last two or three months was; it must have been brought down on account of the war. For 1898 it was probably 50,000 cases less than for last year; we are bound to guess a good deal, as they give us no information from the factory.

367. Are there any other breaches of the contract upon which you rely, other than the non-completion of the factory during 2½ years and the failure to satisfy the requirements of the public?—We maintain that the contract as it was put in operation was not valid at all.

368. That is more a question as to whether or not it was in the power of the Government to grant this Concession?—Not only that, but from time to time the conditions were not complied with, and they were operating under this monopoly when they knew it was not valid. The Raad had appointed various committees and Commissions to investigate, and it was notorious that the reports were adverse to the company; still they went on exercising their so-called rights and deriving all the profits when they really had no valid instrument at all. They were absolutely thieves at that time. We lay considerable stress upon that because this factory, in connection with which they set up a claim for consideration, and which they say cost from £600,000 to £1,000,000, was paid for out of profits which they derived when their monopoly, whatever it is to-day, was a swindle. They had no valid monopoly and they have spent these funds on this factory and they claim it was legitimate enterprise.

369. At what moment of time do you say they were acting under an invalid instrument. The contract is alleged to be made contrary to the regulations of the Raad, and they say that the Government waive compliance with the regulation?—Well, the Government did so, and not the Raad, and we do not recognise that.

370. Do you mean that directly it was pointed out to them that this contract was beyond the powers of the Raad, from that moment they ought to have ceased to make dynamite?—They did not make it at all. They were making these huge profits out of imported stuff.

371. They were allowed to import for 2½ years?—Yes, but after that they imported when they pretended they were manufacturing. Our contention is that if, as was alleged, their position has lately been legalised by the Volksraad, everything they did prior to that must have been invalid, otherwise it would not have required legalising, and they have no proper claim for consideration at all for that money expended on the factory.

372. You are proposing that the factory which they have erected should be paid for in no case. At what date was that factory commenced?—I cannot tell you from memory; in 1893 or 1894.

373. You say they were wrong in commencing to build this factory?—No. You asked me a question which really led me off the line. This is my point. They have claimed that they expended a large amount of money in creating an industry; that they have raised a lot of capital, and that they only expended that capital on magnificent works, probably the best in the world, costing them something like £900,000. I say that is not money put up legitimately by people developing an industry. It was money taken out of us at a time when they had no title and no right to do it. It was not capital really put up by them, and they have no claim for consideration. It is undistributed profits which they deliberately put in there, and now they want to get it refunded.

374. You say they had no proper title to make these profits?—They are not entitled to a half-penny of consideration for all that is there.

375. That is why I ask the question. You say the expenditure on the factory in the first instance was illegal. In order to make out your proposition it is necessary to show that they had in their monopoly applied profits to the building of their factory?—We say they have derived these profits improperly. They were free to deal with them as they chose, and they applied them in creating this factory. I do not mean to say that it was illegal for them to build a factory, but they built it by means of profits which they had illegally made.

376. We are still at "B." We have dealt at present with your general ground that it is contrary to the Conventions. We are now upon the Conditions of the Contract, which you say they have not fulfilled. As to that you have told us that the requirements of the mines were not satisfied, and that there were other breaches of the Contract. We rather got away from that plea, that their claim for consideration is unfounded, because the factory was built and paid for out of profits which you say were illegally made. The question is whether you rely on any other alleged breaches of the Contract than those you have already told us?—The first is that it is contrary to the Conventions; the second, that they could not fulfil their undertaking, and, following that up, that the breach was kept alive in this way: they made repeated attempts to get an extension of their period. The matter was more or less publicly discussed by the Volksraad, and approval of this extension was refused. Therefore, anything they got from the Government was in the nature of a conspiracy to defeat and avoid the proclaimed intention of the Volksraad. I say that if they had got anything from the Government which tended to legalise their contract it was a conspiracy between the members of the Government and themselves to defeat the intention of the Legislature of the country. These attempts were made from time to time up to the middle of last year, either to get an extension of the period, or alterations in the conditions so that they could be let off from the consequences of certain breaches in the past. I was not prepared to go into the legal merits of the question, but with regard to the industrial part I am quite prepared.

377. We only want the facts?—The whole of this will be found recited in the Industrial Commission report.

378. What is your opinion with regard to the public interest being affected by this monopoly? In your judgment is this monopoly prejudicial to the public interest?—Most certainly.

379. Are you prepared to deal with the question of price?—I am.

380. You have heard what Mr. Quinan has said. Are you satisfied that you would be able to obtain explosives in sufficient quantity from sources independently of Nobels?—Yes, I am. And I am satisfied of another thing, that we could get our supplies of explosives from Nobels very readily. They are shrewd business people, and do not want to lose the best market in the world. I am not in the least bit afraid of that. I might mention one point referred to by Mr. Quinan; that is, that the American factories might not care to compete because of the understanding with Nobels—the "ring," in fact. That did not prevent us in the past from buying in America and shipping it ourselves, and it would not prevent us in the future. There is no law in America that prevents the exportation of dynamite, and they cannot refuse a purchaser in the States. We can have a man there buying, and they cannot call upon him to declare where he is going to use the explosive. Then there is the Climax Powder Company of New York and Philadelphia. In 1898 they made an offer to the Chamber of Mines to supply us with the required explosives, and to increase their factory. Of course, they could not supply it all, but if you were to break this monopoly we could worry through without blasting gelatine. We could use any other explosive, of which there are scores. We could get through our period of trouble, even assuming that Nobels were to refuse to supply, but there is not the slightest apprehension that they would do so. Moreover, we have contracts in Europe from factories outside of Nobels' "ring."

381. (*Mr. Loveday.*) Do you think that is the general opinion?—Yes; I am sure it is. As a matter of fact, we hear from various people that they have been approached by Nobels with offers within the last few weeks, they being aware about the sitting of this Commission.

382. (*Chairman.*) Are you able to give us in any detail the grounds for your opinion that the sources of supply would be adequate independently of Nobels?—We have contracts for considerable supplies, and we have been buying dynamite under these contracts for several years for use in Swaziland and Rhodesia. These factories are willing to increase their capacity, assuming that Nobels were to refuse, so I do not think it is probable they would cause us any inconvenience, except for a few months, by making us use other explosives. We might have been able to get many other explosives, and the only reason they have not been in use is because it did not suit these people. They had arrangements to produce a certain kind and quality,

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and it was more profitable for them to continue selling that which they could force upon us than to allow the introduction of any other explosive, even if it could be produced cheaper, because they would not have to abandon all their old appliances and works, but could simply continue their system of exacting any price they liked.

383. (*Chairman.*) I do not think I need go into the figures quoted by Mr. Quinan as to prices?—We are buying No. 1 dynamite in Europe, and have been doing so for the last three years, at 30s., f.o.b., Hamburg or Antwerp. No. 1 dynamite is the 75 per cent. explosive. We take No. 1 as the standard for convenience. It was in vogue at one time, when blasting gelatine was not used at all, so that we continue to quote it, though probably four-fifths of our consumption now is blasting gelatine. There should be a fixed relation between the price of No. 1 and of blasting gelatine, but there is not as a matter of fact, because of this monopoly. When they quoted us a reduction per case on dynamite it was calculated on No. 1 dynamite as 10s. per case, but the calculation should have brought the reduction to 15s. on blasting gelatine, which it does not do. In the Industrial Commission Report, 1897, I stated that dynamite was sold for 21s. 6d. per case, f.o.b., Hamburg. I adhere to that statement. The cost of manufacture was supposed to be considerably under 21s. per case. The expenses between Hamburg, f.o.b., and delivery in bond in Johannesburg amounted to 11s. 1d. per case, viz., freight, 4s. That was high. You commented upon the low rate of freight just now, but you can get it at 2s. 6d. by a sailing ship. Then landing and agency at Port Elizabeth was 1s., which more than covers Mr. Quinan's figure, as there is an open roadstead at Port Elizabeth. Transit duty about 2s. 1d., railage 4s., making in all 11s. 1d. These were the charges, but they are lower than that, if anything, now.

384. (*Mr. Ashmore.*) "Transit" is what the Cape Government takes?—Yes; it is robbery. They charge us a high railway rate and transit duty as well. In 1893, when Nobels, who own this factory, and do not pretend otherwise, fought Lippert, they made a contract with us which has been very much misrepresented. Lippert was selling dynamite at 85s. or 87s. 6d. per case, the Nobels agreed that if we could get permits to import on paying the duty of 38s. per case, they would sell it to us so as to compete with Lippert, and the Government would get the 38s. revenue. The undertaking was that they would sell us all we should require, down to a limit of 40s. in bond in Johannesburg. They reserved the right to continue that contract at a still lower price if they chose to do so. If you deduct 11s. 1d. fom 40s. you get 28s. 11d., at which figure Nobels made their big European profit, a profit determined by the sweet will of the "ring" in Europe.

385. It is those considerations which led the Industrial Commission to arrive at the finding that if a profit of £2 per case were estimated it was not excessive?—Not excessive. All the information really points to this, that 29s. or 30s. gives a very handsome profit to the manufacturer, whether in America or Europe, for No. 1 dynamite. Mr. Quinan's figures bear that out almost exactly. His cost was 22s. 6d. per case in America; add 7s. 6d. for 30 per cent. profit, and you get 30s. Nobel offered it to us at 30s. In 1897 we had offers from America which would have enabled us to land No. 1 dynamite at 33s. 4d., but a week later, owing to the price being put up, the quotation was 37s. 6d., landed in bond, in Johannesburg. We feel that dear dynamite is an undesirable tax, whether it goes to the monopolist, or, as we offered it, to the Government. We really made that offer in desperation. We preferred that the revenue should go to the Government, with the chance of having relief of taxation in other directions. It is a bad tax because it falls particularly heavily on the low-grade mine.

386. (*Mr. Ashmore.*) You think it is not a tax on profits, but a tax on struggling enterprise?—Quite so.

387. *Mr. Advocate Curlewis* suggested that Mr. Fitzpatrick be asked to corroborate his evidence before the Industrial Commission with reference to the loss to the mining industry. (*To witness.*) On that occasion did you not say, "If we had free trade we would save on explosives alone 1s. 9d. per ton, that is, assuming that the working cost is 29s. 6d. per ton."?—Certainly I said so, but the working costs have come down since 1897. The proportions given in my evidence before the Industrial Commission have altered slightly, as we expected they would, owing to improvements in methods of working, machinery, etc., on one or two points. Mr. Albu has informed me that he has been offered blasting gelatine, now, in Europe, at 37s. 6d. per case, f.o.b., which is a slightly better price than we buy at. We can buy at 38s. We have several sources. I am quoting to you sometimes one and sometimes another, but they are all the actual prices in force. In any contract that we make, there is no profit to an agent included. We deal for certain mines, and we give them the benefit of the average. There is no profit over and above the manufacturer's profit or the sale price in Europe. I mention that because some of those interested might wonder why there is a shilling difference here and there, but they pay the average. We have 40s. quoted for one blasting gelatine, and a shilling or two higher for another of the same quality, but from different makers. I believe the Kimberley price for No. 1 dynamite is 50s., including 12s. 6d. duty. A former price in Kimberley was 55s., all duty paid.

388. (*Mr. Loveday.*) The same quality—75 per cent.?—Yes. We have always opposed the establishment of this Transvaal factory on the ground stated by Mr. Quinan; they are obliged to carry for a long distance by rail about three or four times as much weight of raw material as they produce in dynamite. If they were to pay the same rate as we had to, they would pay on, say, four cases of blasting gelatine at 4s. a case, that would be 16s., whereas the manufactured article would only pay 4s. That in itself is a tax of 12s. a case.

389. (*Mr. Ashmore.*) As a matter of fact the raw material would be charged at rough goods rate?—I do not know how it would be classified, still there would be a considerable difference.

390. (*Chairman.*) The difference in the cost of manufacturing is 7s. 6d. to 8s. between No. 1 and blasting gelatine?—The difference in Europe in the selling price is from 11s. to 15s., and the selling price difference in Johannesburg is £1 to £1 2s. 6d. The profit, therefore, on blasting gelatine is greater than the profit on No. 1 dynamite. They put up the price much more than the difference in the cost, and when they reduce it they reduce it equally on a basis of 10s. per case.

(*Mr. Curlewis.*) They actually made a reduction on an article which we did not use.

NETHERLANDS RAILWAY CONCESSION.

391. (*Chairman.*) You have the statement of the Chamber of Mines before you, setting forth their objections to the Netherlands Railway Concession?—I have, and it reads as follows:—The Chamber objects to this concession on the ground that it is contrary to the public interest, While the State has assumed a heavy liability in guaranteeing interest in connection with the financial arrangements of the Netherlands South African Railway Company, and is also a large shareholder in the company, it has no representation on the board of directors, and no control of the working and policy of the undertaking, and further, it is inimical to the best interests of the country that so important a monopoly should be in the possession of private individuals and controlled by a board of directors at Amsterdam, whose main, if not only, object must be the earning of as large dividends as possible. As evidence of the justness of this contention, the Chamber would point to the heavy tariffs for the transport of goods over the main lines, and especially to that for the conveyance of coal along the line of the Rand. In both cases the rates are far in excess of those charged in the colonies of the Cape of Good Hope and Natal, and of those which formerly obtained in the territory now known as the Orange River Colony, *e.g.*, in the Cape Colony the charge is 1d. per ton per mile for the transport of coal inland and ½d. per ton per mile from the mines to the coast, while even now, after a reduction of tariff consequent upon persistent representations by the Chamber, the average rate for coal from Springs to Randfontein is 2s. 1-5d. per ton per mile. Further, the right held and exercised by the Company of collecting Customs on all goods entering the Transvaal at Komati Poort is prejudicial to the interests of the State. It would, therefore, in the opinion of the Chamber, be greatly to the advantage of the country if the railway were expropriated, and this course the Chamber would earnestly advocate.

392. Do you corroborate that generally?—I do.

393. You do not say there is any breach of their

concession in connection with rates? You are not prepared to say that they have exceeded their rates?—I am not prepared to say that without looking into the matter. There were, however, other things. You know that there was an excessive rate of 7·7d. on rough goods from Vereeniging to Pretoria. But, so far as I can gather, there is no allegation from the mines or anybody else that their maximum rate was exceeded, or if it was, I believe they always got the consent of the Government.

394. (*Mr. Ashmore.*) That was when they had their quarrel with the Cape Colony?—Yes.

395. (*Chairman.*) It hardly falls within our purview to go into the question of rates, unless it is alleged that they charged rates that were beyond the powers of their concession. You do not make the same objection to what is called a monopoly in a railway company and a monopoly connected with industrial working? Almost all railways are quasi-monopolies?—Well, they are not general monopolies, though they are monopolists of a certain route or line perhaps. But there is no possible competition under this concession. They have the main routes, and the option of building other lines if required. The only competitor is the Government itself. Assuming that the Government have a right to compete—they are already involved as guarantors for the whole of the debenture capital, which capital is limited in its earnings to, say, 5 per cent. I mean debentures, so they would be cutting their own throats if they established other lines. Thus you see there is no possibility of competition. This private company became the arbiter of our destinies, could regulate to a great extent the development of our industry and of the whole country, and could largely determine the course and volume of trade.

396. How do you support that contention?—I do so in connection with the Customs collection. During nine years the Government is supposed to have shared in the profits under its 85 per cent. clause, to the extent of £2,962,000 odd. But of that, £1,418,000 was simply their own Customs duty lumped in. It was thrown into the general revenue of the railway company. They collected these Customs dues for four years for their general revenue before the Government began to share in the profits, namely, for the years 1891-2-3-4.

397. (*Mr. Ashmore.*) Surely there was very little duty in 1891?—The amounts were:—1891, £1,811; 1892, £17,608; 1893, £47,370; 1894, £56,536. They paid in these Customs dues into their own general revenue, less the cost of collection, and the reason why it paid them to do this was that before they paid out the Government share of profits they deducted 15 per cent. out of general revenue, 10 per cent. for employees, and 5 per cent. for the directors. It also gave them the handling of trade. They could either remit or neglect to collect the Customs duty on the Delagoa Bay line, and thus draw away trade from the Cape route, where the "pull" is only 50 miles, to the Delagoa route, where they have a "pull" of 350 miles.

398. Is there any evidence that they did that?—There were cases of favoured treatment and very many suspicious cases which gave rise to a strong feeling that they did follow that policy, and it is supported by the fact that most of the high tariff goods came in through Delagoa Bay, and that foreign firms preferred dealing that way. All I wish to lay emphasis on is that the Company had the power to do this if they liked. I can also give you instances showing how the monopoly operated in individual cases. The French Rand Company, in the transport of its machinery to Luipaard's Vlei, got it over-carried several times to Krugersdorp. The Netherlands Company obliged the Mining Company to pay the over-carriage from Luipaard's Vlei to Krugersdorp, and not only that but forced them to pay the return carriage from Krugersdorp to the proper destination. At the Crown Deep a very heavy mill engine was brought to the nearest point on the Netherlands line. We were informed that we must send our own staff to off-load it on to the Company's wagons at our own expense. Then we told them that three others of a similar make were coming out. The Netherlands Company said we must give an undertaking to do the same thing in off-loading at our own cost, etc., otherwise we must cable to countermand the order, which meant altering the entire construction and designs of the mine. Their reason was that their crane only carried 10 tons, and these pieces weighed 11 tons. Their fines and coal charges were imposed without any right of appeal, and further delivery was refused until they were paid, simply because there was no competition at all, and we had no alternative. There were also many inconveniences with regard to pipe and tram lines and underground workings. They refused us facilities, for which we are now asking, for cheap delivery of coal. They would not allow it. They refused us a south line and sidings, and they would not allow us to put in a south line ourselves. By reason of this monopoly, as the other railways in South Africa are owned by Governments, they practically determined our relations with neighbouring States, or at least very largely influenced them. It was a huge political engine.

ALBERTSKROON TRAMWAY.

399. (*Chairman.*) There was something said with regard to the Messrs. Eckstein and the Steam Tramway. I wish to know how this arose, and the objections from the point of view of the industry?—The original idea was a south line along the Reef for the purpose of serving the companies with their coal. That line would in the first instance be connected with the Netherlands Railway.

400. How did this idea originate?—It came from the mines, and was submitted to the Netherlands Railway. We did not propose to join at the point indicated by Mr. Kentish Moore, but at a point right east, where anyone would join if influenced by economic reasons. We would naturally join at the point nearest to the coal, and drop the coal along the line as it was required.

(*Map put in by Mr. Kentish Moore reproduced, and the witness gives explanations as to his idea for the construction of the coal and brick line.*)

401. Mr. Kentish Moore made a point that so far as his plans were taken, there was only one possible route?—The limit for variations is very small. You must almost necessarily go over the same track.

402. What Mr. Kentish Moore said was, that it was necessary in order to get from Albertskroon to Johannesburg to take a certain circuitous route?—If it were for the purpose of carrying bricks, they could have arranged with the Netherlands Company to join their line at the nearest point by means of a branch a mile or two long, then the Netherlands Company would take the bricks, because the whole of the return traffic is "empties" from Krugersdorp to the coal mines."

403. Mr. Kentish Moore said that the Military have availed themselves of his plans?—The history of that is this: We made an application to the Netherlands Company for a south line, but they refused to build it. We certainly did want such a line. Some months afterwards, at the Chamber of Mines, an informal proposition was made by Mr. Kentish Moore, who said the Netherlands Company would not deal with us direct, but would deal with us through him. We, however, did not want any intermediaries, and we refused the proposition. Then we heard that he had got some sort of a Concession, which we understood was a scheme to sell a township, but it was never published. No notice was ever given to the people whom it affected. We thought it was some sort of a scheme brought up under the cloak of benevolence to sell something.

404. Personally, did you have any information about it?—Personally, no, and I do not know that they have got any rights yet.

405. Did you never hear anything with regard to this part of the line?—I did hear any amount of discussions which arose out of our first proposition regarding a south or coal line.

406. Speaking for yourself, did Mr. Kentish Moore never approach you?—No. When these discussions among ourselves took place we did not know he had a concession. We had discussed the matter with reference to the original scheme. His statements about letters of introduction to managers are very misleading. He had special facilities to go on to our Mines, because he was manager of the Road Trust, and had access to every manager on every property, for laying out the road. Had we known he was going in for concessions we would never have employed him.

407. Was his appointment as manager of this Road Trust an official appointment?—It was a Mines appoint-

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ment. He is at this moment engineer of the Road Trust.

408. What is this Road Trust?—We tried to get a road made by the Government, but they would not do it, and finally the Government granted us permission to make it ourselves subject to their having some sort of control over it, and they gave the services of convicts and some other assistance for the work. He was in our employment, not in that of the Government. By means of his position he became possessed of all his information. He says he discussed the project with the engineers, and he certainly would have lots of opportunities of doing so, and very likely, because of our former proposition, it would be gone into thoroughly and cordially, simply as a mining proposition. When ultimately he came to us and said he had a Concession, I consulted Mr. Eckstein, and Mr. Eckstein refused to have anything to do with it, because it was a concession, and we were not going to market for that kind of trading. He got the same reply from our firm in London, to whom he went and offered this proposition.

(*Witness.*) I am now reminded that Mr. Kentish Moore was appointed jointly by the Government and the Mines.

409. I do not see any indication or reference in Mr. Kentish Moore's prospectus that he had approached the mine owners and that they approved of his scheme?—My only point is that as an engineering proposition it might have been considered, but as a Concession it was never considered at all by us, so that there was no support in the past from the mines to which he can refer. His proposition has never been before a single Mining Company, so far as I can gather, and I have made enquiries. I have a recollection of this, that there was some gossip about his having obtained a Concession, and we said—"Well, what can he do with it? He has to come to us for consent to come on to our mines and bring our coal, and we won't deal with a Concessionaire."

410. His own account to us was that it was merely a series of sidings?—Yes, he said that it was like an ordinary Railway Bill in England, but this was sprung upon us—we who were concerned never heard of it, we are only learning the terms now—and legislation in England does not surely take that form.

411. Have you made some enquiries about this, as to his cost of construction?—Yes. He was to build a line 22 miles long, that is the mines section, consisiting of a lot of sidings, which, he says, made it practically a goods yard. What is being done now by the military authorities is the construction of a line at the outside 15 miles in length. Mr. Kentish Moore's line was to cost £14,000 per mile, and the cost of this one is £4,500 per mile, everything included. He estimates a saving of 2s. 6d. on each ton of coal, of which the mines would only get 1s. 2d. Our engineers have estimated that the saving will be 3s. 8d. I think that deals with the question whether it will be a benefit to us or not. The whole price of the work on this new south line, according to the military estimates is £67,500, and Mr. Kentish Moore's estimate is £309,000; and we would have to find profits for him on perhaps £500,000.

With reference to the Dynamite Concession,

Mr. Curlewis stated that he would hand in copies of correspondence showing that, whereas representations were constantly made by Lippert that there was no fear of a scarcity of dynamite, as a matter of fact he could practically have no stock at all.

(*Chairman.*) It would be very desirable that evidence should be laid before us, if possible, showing what Lippert handed over to the Company in the shape of assets.

(*Mr. Curlewis.*) If the Concession can compel the attendance of witnesses, there is one at Pretoria who would not be a friendly witness, but would be able to give valuable evidence.

FOURTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Wednesday, 10th October, 1900.

MEMBERS OF COMMISSION.

Hon. A. LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. ASHMORE, C.M.G. Mr. R. K LOVEDAY.

Mr. B. HOLLAND, *Secretary*

10 Oct. 1900.

The *Chairman* said it would be necessary to read the notices under which this inquiry was to proceed, as no doubt these had been seen by all parties interested. He would, therefore, not trouble to read them again, but, for the benefit of those who were not at Cape Town, where he made a statement with regard to the procedure which the Commission would adopt, he would now read what he then said, in order that those gentlemen might be informed as to that matter.

The *Chairman* then read the statement which he had made at Cape Town. (*See Report of First Day*, p. 1.)

(*Mr. Attorney van Hulsteyn.*) I am instructed to appear on behalf of the administration of the Transvaal.

(*Mr. Advocate Curlewis.*) I am instructed by Mr. Hudson to appear on behalf of the Chamber of Mines.

(*Chairman.*) Are any holders of Concessions present?

(*Mr. Secretan.*) I appear on behalf of the Pretoria-Pietersburg Railway.

(*Mr. De Korte.*) I appear with Mr. Duxbury on behalf of the executors of Mr. Tolman, interested in the Selati Railway.

(*Mr. Advocate Duxbury.*) I appear on behalf of the Standard Bank and other banks in connection with the Concession granted to the National Bank.

(*Chairman.*) You appear for objectors. In general objectors must come in person if possible, and represent their objections in person.

(*Mr. Duxbury.*) I am instructed that statements will be put in.

(*Chairman.*) We have had statements from objectors already.

(*Mr. Duxbury.*) I understand these statements are not complete. Objections were handed in at Cape Town on behalf of the Standard Bank, the Bank of Africa, and the African Banking Corporation only. I understand that it was arranged in Cape Town that further evidence on this matter would be taken to Pretoria.

(*Chairman.*) Not as far as these gentlemen are concerned, as they completed their statements, unless some reason is given which is not at present apparent.

(*Mr. Duxbury.*) I do not allude to these. I allude to the local managers.

(*Chairman.*) I deem it necessary to point out that it must not be taken for granted that this Commission will hear counsel on behalf of individual objectors. Unless objectors belong to a class of public bodies such as a municipality representing a large number of people, who must of necessity be so represented, ordinary objectors to a Concession must understand that they are expected to appear in person.

(*Mr. Duxbury.*) I also appear on behalf of the Warm Baths Hotel Company. They claim to be holders of a lease or concession of certain ground near the Warm Baths. There is a peculiar history attached to this, and we are not sure whether this case will fall within the purview of the Commission. It appears that, in the year 1886, a lease of ground was granted for a period of twenty-five years, with power of renewal, to one Villiers. This lease ran from 1886. In 1891 it was acquired by a company known as the Warm Baths Hotel Company. They carried out all their obligations under the contract, but in the year 1895 the Transvaal Government, without giving any reasons or notifying any alleged breach of contract, suddenly, by Volksraad Besluit, cancelled this lease. After that the holders of the lease intended to take action against the Transvaal Government; but, unfortunately, Law 1 of 1897 was passed providing for the validity of Volksraad Besluits, and accordingly by this law the Volksraad considered that this lease was cancelled. The matter was then gone into by the holders, and it was settled that the only thing to be done under the circumstances was to make representations to the Imperial Government. Steps were taken, and the thing went on until June, 1899, when Her Majesty's Agent was approached, but he suggested that, considering the immense pressure of Imperial work at the time, and the urgency of public affairs, it would be advisable to allow the matter to stand over. The war then intervened, and that is the position just now. It is the intention of the Warm Baths Hotel Company to take action—to sue the Transvaal Government.

(*Chairman.*) I am afraid that, with regard to any such enterprise, the Commissioners can give no opinion, but we are all agreed that this is not a Concession within the meaning of the notice under which this inquiry is being held.

(*Mr. Attorney Lance.*) I appear on behalf of the Rand Central Electrical Works, Limited, in support of a contract which they hold from the late Transvaal Government. It would be very convenient if we could have a date fixed on which we could bring all the witnesses and documents over to Pretoria.

(*Chairman.*) Or at any rate if we could say "not before a certain date." We will endeavour to do so.

(*Mr. Lance.*) I also appear on behalf of the Telephone and Telegraph Advertising Company, Limited. This is a contract which I am not quite sure comes within the purview of the Commission, but I should like simply to briefly state what it it. It is a contract held from the Telegraph Department with the approval of the Executive Council, to put up advertising notices on the different telegraph and telephone poles in Johannesberg, Pretoria, and various other specified places.

(*Chairman.*) What is the term of the Concession?

(*Mr. Lance.*) For a period of ten years. It purports to be a contract by the head of the Telegraph Department, giving authority to deal with telegraph and telephone poles.

(*Chairman.*) What is the consideration?

(*Mr. Lance.*) There is a rental of £500 a year.

(*Chairman.*) We should like to see the Concession, but my present impression is that it is not one with which we can deal.

(*Mr. Lance.*) The papers are put in. I believe they were received in Cape Town. If you wish to hear evidence on the subject it may be convenient to fix a date.

(*Mr. Duxbury.*) I also appear on behalf of the Zuurbekom Waterworks, Limited, the holders of a Concession to lay pipes along the road from the farm Zuurbekom to Johannesburg. This Concession was granted in 1897. We have not been able to get the documents from Johannesburg, but I am instructed that copies are now being made in the Deeds Office, and will be ready in the course of two or three days. I am also instructed in connection with mineral Concessions granted by native chiefs in the Transvaal and subsequently confirmed by the Transvaal Government.

(*Mr. Loveday.*) On native locations?

(*Mr. Duxbury.*) Yes. The Blauwberg Concession is one.

(*Chairman.*) All the documents in such a matter should be handed in, but I do not pledge the Commission that we shall go into it. 10 Oct. 1900.

(*Mr. Attorney Rooth.*) I appear on behalf of the National Bank, the Pretoria Tramway Company, Limited, the Hatherley Distillery, the Transvaal Dynamite Company and Peycke and Co., who hold the Match Factory Concession under Volksraad Besluit.

(*Mr. Attorney Thompson.*) I appear on behalf of the Johannesburg Waterworks Estate and Exploration Company, Limited, giving them the right to lay pipes through the streets of Johannesburg; also for the Johannesburg Market Company, Limited, for the building of a market house and holding of sales; also for the Johannesburg Government Entrepôt, Limited, and the British and Transvaal Financial Company, Limited, the holders of an Iron Concession. In connection with the last-named I may mention that it is a London company and full instructions, together with all the necessary documents, are not yet to hand. With regard to the others, copies of the necessary documents are being prepared in the Deeds Office, but with the very limited staff available in that department, it may take some few days to complete them.

(*Chairman.*) It would be convenient that all these should be taken with the other Johannesburg cases.

(*Mr. Scrutton.*) I appear on behalf of Oscar Scheuerman, who holds the horse tram contract between Jeppestown and Boksburg, and in connection with which Mr. Advocate Douglas Forster is counsel. This being a Johannesburg case, and all the witnesses and papers there, I should like it to be put down for a future date. I also appear on behalf of E. P. Scrutton, owner of a mineral Concession in a native location in Zoutspansberg, granted by the Chief Magato.

(*Chairman.*) I do not think we have anything to do with that.

(*Mr. Scrutton.*) It was confirmed by the late Transvaal Government.

(*Chairman.*) We had better see the documents.

(*Mr. Attorney Roos.*) I appear on behalf of the Pretoria Lighting Company, the Pretoria Waterworks Company, and the Transvaal Leather Company.

(*Mr. C. A. Vincent.*) I appear on behalf of the Municipality of Pretoria. Mr. Gilfillan will probably appear on behalf of the Municipality of Johannesburg, but he has not yet arrived.

(*Chairman.*) Does any other gentleman present represent any Concessionaire, or is there any Concessionaire here representing himself?

There was no response.

(*Chairman.*) Then we may take it that we have got a complete list of those who wish to appear.

(*Mr. C. T. Thompson.*) There is one matter with regard to the native mineral rights alluded to by Mr. Scrutton. An impression seems to have been created that they do not fall within the scope of this Commission, and are really not in the nature of a Concession. If a native chief grants a permit to anyone to prospect for minerals on his location it is submitted to the Government, and the Government may or may not approve. If they approve, then a mining lease, or mynpacht, is granted on similar terms to other mining leases or mynpachts. Will the Commission inform us if Concessions of this nature will be considered?

(*Chairman.*) We cannot give an opinion without having seen the documents. Are they leases or are they granted in perpetuity?

(*Mr. Thompson.*) Leases for a term of years the maximum term being 20 years. As a rule they are granted for five years, with the right of renewal.

(*Chairman.*) What is the consideration? Are there any royalties?

(*Mr. Thompson.*) Yes, a royalty of 2½ per cent., a portion of which goes to the chief and a portion to the Government.

(*Chairman.*) At any rate, as regards Mr. Scrutton's statement we should like to see the documents.

It was then announced by the Chairman, that the Netherlands Railway Concession would be considered on the following day (Thursday), and the Chairman asked if anyone appeared on behalf of that company.

(*Mr. van Hulsteyn.*) With regard to Mr. Kretschmar, will the Commission call him or will it be necessary for me to do so?

(*Chairman.*) We will call him.

FIFTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Thursday, 11th October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

MATCH FACTORY CONCESSION.

(*Mr. Rooth.*) As a special favour I would respectfully ask the Commission to depart from the order you have laid down and take the Match Factory Concession previous to that of the Netherlands Railway Company. My client is here from Johannesburg, and desires to return at once to complete an order he has received from the military authorities. I do not think the matter will take 15 minutes. It is a very innocent concession.

The Chairman consented.

GEORGE BRANDON, sworn; and Examined.

Mr. G. Brandon.

11 Oct. 1900.

412. (*Chairman.*) You are a partner of the firm of Peycke and Co.?—I am.

413. Carrying on business in Johannesburg?—Yes.

414. Did your firm obtain a contract from the late Government of the South African Republic on the 8th February, 1899?—Yes.

415. And a copy of that contract has been sent in?—Yes.

(*Mr. Rooth.*) It is under the Volksraad scheme of 1896, and it is not a monopoly.

416. (*Chairman.*) The contract briefly is one under the Volksraad scheme of 1896, by which you are authorised to erect a factory, but no exclusive right is granted. The Volksraad did not impose a protective duty on the article you manufacture?—That is the substance of it.

417. Have you done anything towards carrying out your contract?—Yes, I started the factory about the middle of June and closed down on the 30th September, 1899. I reopened the factory on the 8th October, 1900.

418. Did your firm build the factory?—Yes.

419. Have you books showing the cost?—Yes.

420. Will you let us see them?—Yes.

(*Mr. Rooth.*) The books are not here, but the particulars are in the statement which has been handed in. (*Here follows statement.*)

(*Chairman.*) I suppose the witness can send on his books?

(*Mr. Rooth.*) Would certificated extracts do?

421. (*Chairman.*) Yes. (*To witness.*) Subject to confirmation by the books can you state the particulars from your recollection?—Yes.

422. What was the amount spent on the building?—£4,000.

423. And on the machinery?—£2,500.

424. And the fencing?—£150.

425. And the windmill and well?—£250, giving a total of £6,900.

426. What was the price of the land on which the factory is erected?—£375, and it is absolute freehold.

427. Is there any other factory in the Transvaal besides this one?—Yes, there is one at the present time.

428. Was that established before you?—No, I opened first.

429. Was that other factory established under a similar contract?—So far as I know, yes.

430. (*Mr. Rooth.*) A similar contract has also been granted by the late Government to a gentleman of the name of Fink?—Fink's factory is not yet built. There is a factory called the Koedoe Factory at Klipriversberg. They have been working right through the war.

431. Do you know the size of that factory?—No, I know nothing about it.

432. You were then the first in the field, and any connection you have obtained is owing to that fact?—Yes.

433. When did you begin to build?—We commenced building in 1898, before the contract with the late Government was signed. In fact it was nearly completed when the contract was signed. The machinery was out here.

434. Then you did not require any authority of this kind in order to build?—So far as I was given to understand, no.

435. You built at first without any authority and had nearly completed the factory in February?

(*Mr. Rooth.*) Mr. Brandon was advised that it was not necessary to obtain such a contract in order to enable him to start such a factory.

436. (*Chairman.*) (*To witness.*) In other words you spent, or entered into an obligation to spend, money in the erection of this factory before the contract was entered into at all?—Yes.

437. (*Mr. Loveday.*) You are aware that a protective duty has been imposed of 4s. per gross; that was in the beginning of 1898?—Yes.

438. (*Chairman.*) Of course nothing has been done under this contract by way of imposing any further duty?—No.

439. And you would not ask for it either?—No.

440. You are quite satisfied with the factory as it stands, and you do not desire any duty to be placed on matches?—No. We rely on the existing duty.

441. (*Mr. Ashmore.*) If it were not for the existing duty you would not have built?—Oh, yes.

442. If the duty were abolished what would you do?—I should expect that the Customs duty, the same tariff which is enforced at the Cape at the present time, would be made applicable to the Transvaal, and we would be quite satisfied.

443. (*Mr. Loveday.*) According to this concession you have to manufacture the matches here as much as possible from material found in the country?—Yes.

444. Do you do so?—Not yet. I had already started a plantation for the wood that is required, but it has been destroyed during the campaign.

445. Do you import merely the wood, or do you import the matches in a semi-manufactured state?—We import the wood ready cut, but it is impregnated and paraffinated here.

446. And the boxes as well?—Yes, but the wood comes out loose. I have machinery in Port Elizabeth which will enable me to cut the blocks here.

447. Do you make the boxes from the raw material pure and simple, or does it come out in a semi-manufactured state?—Yes, at the present time they are partly manufactured.

448. Then you fold each piece of wood up and make a box out of it?—Yes.

449. Then the printed paper cover?—That is also imported, but I had already started negotiations to have the labels printed here.

450. But as a matter of fact you have not done so?—No, we have had no time to do so.

451. The match itself, is that cut here; so far it is also imported?—Yes. But it is impregnated and paraffinated and the heads are then put on.

452. The wood comes out and then goes through these various processes, but it is already cut in the shape of a match?—Yes, but as I have said, I have already got the machinery, and I am only importing the timber until I can get it here. The proper wood grows in the Transvaal for the manufacture of matches. *Mr. G. Brandon.* 11 Oct. 1900.

453. (*Mr. van Hulstein.*) On behalf of the Administration I formally protest against this concession. (*To witness.*) Do I understand that you only rely on the duty as it exists?—Yes.

454. Would you be prepared to do away with this contract as it stands? That contract is of no value?—It speaks for itself; why should I do away with it?

455. What is the value of the contract to you?—The contract is in existence and I do not see why I should do away with it.

456. That is your only explanation?—Yes.

(*Mr. Rooth.*) I have no further evidence in this matter.

NETHERLANDS SOUTH AFRICAN RAILWAY COMPANY CONCESSION.

J. VAN KRETSCHMAR, sworn; and Examined.

457. (*Chairman.*) You are the General Manager of the Netherlands Railway?—I am the Managing Director, and I put in the following statement* (*statement put in by Mr. Van Kretschmar*):—The Company (N.S.A.R.C.) bases its conduct during the war upon Article 22 of its concession. The performance thereof required, in my opinion and that of my directors at Amsterdam, that no obstacles should be placed in the Government's way, and we were also of opinion that at the same time it would be better for the interests of the shareholders if the performance thereof by order of the Government were carried out by experts and officials entrusted with railway matters. As the Government of the S.A.R. did not in the beginning avail itself of the right of taking over the railway, because it was of opinion that even apart from that we were at its service, I wrote the annexed letter, dated 6th September, 1899, No. 17/2202N., to the Railway Commissioner because I held a contrary view. *Mr. J. van Kretschmar.*

After the discussion in the Executive Council, in which I made it appear evident that we, as a private Dutch company, could not voluntarily place the railway at the disposal of the Government, my request was acceded to, and the Railway Commissioner sent me the resolution of the Executive Council relating to this matter and the accompanying letter, dated 20th September, 1899, No. 17/2323 N.

In his letter of the 29th September, 1899, B. and M. 499/27563 N., the Railway Commissioner informed me that the Government had taken over the railway from the 29th September. There was no further correspondence about this matter. Service Order No. 36 was then issued.

Even during the months of August and September, and perhaps still earlier, discussions had already taken place with regard to the preparations to be made in connection with the train service in the event of war, because I did not want to be surprised by orders all of a sudden. I could, however, obtain but little definite information; but in consultation with the Railway Commissioner, the Commandant General, and the Commandant of the Artillery, I took steps in the form of "Instructions to the Staff" (see Service Order 32) for the necessary equipment for loading and unloading carriages, to provide for the telegraph service in time of danger, and also to have a couple of bridges on the south-east line blown up in accordance with the Commandant-General's wishes, and, moreover, to fix up coal trucks for the transport of horses, cattle, etc. In order to prevent any inability afterwards to carry out the orders of the Government in consequence of the want of employees, I wrote to the Railway Commissioner (letter dated 16th August, 1899, No. 17/2057N.) asking him to limit the commandeering of our employees, and not to allow any employee to go on commando without his consent. In my letter dated 18th August, 1899, No. 17/2082 N., I offered to give each time a new list of employees available for commando.

I could give many instances where employees were commandeered and the order cancelled on my protesting against the same, but I could also give many instances where I gave the Government a list of men available, and when I was asked to place men available.

The wages of employees on commando were regulated in accordance with precedent cases (Magato and Swaziland expeditions) by Service Order 33, wherein it was at the same time expressly stated that the employees on commando shall not be deemed to be in the employ of the company.

When afterwards, in consequence of the long duration of the war and the great decrease in the traffic, the service staff could be decreased, and *inter alia* the night service suspended, the number of employees available increased more and more, and these were commandeered by the Government especially to guard the railway, the prisoners of war, and for administration purposes. A few objected to take up arms or to do military service, and as there was no employment for them on the railway I gave these honourable discharge, paying them what they were legally entitled to.

The position of my company towards these persons was explained in a letter to their Consuls. I could find no reason why these persons should enjoy greater advantage than those who were compelled to do military service, and that I should thus retain them unemployed in our service.

The employees who did the ordinary work on the railway, whether in the Republic or Natal, still received their full wages, but a portion of it was deposited in the Railway Savings Bank (see Service Order 39) for payment after the war. This was done in order that the company's cash here should, owing to the uncertainty of the future, not be drawn upon too much.

By order of the Government the Company transported the following:—

Commandoes, horses, guns, wagons, provisions, ammunition; in short, everything that was offered for transport. Sometimes the Government notified big movements by telephone, sometimes by written orders. In the same manner extra trains were ordered for special transports. An order was given for each transport which was annexed to the accounts to be handed in by the company and served as a voucher. All freights were calculated according to the current tariffs and in accordance with the concession. There was no change for transport of anything in connection with the Red Cross and medical service. The four ambulance wagons were also delivered free of charge. Everything, moreover, that belonged to the railway was at the disposal of the Government, such as tarpaulins, trolleys, mules, harness, tools, etc., etc. An order on receipt of these was given in so far as they were required for other than railway purposes, which order on receipt was annexed to the Company's accounts against the Government. The Government used the workshop and staff of the company on a large scale for repairing guns, making subordinate parts of ammunition,

* This statement, with its annexures, was in the first instance addressed by Mr. van Kretschmar to Mr. van Hulstein, and sent to the latter gentleman with a covering letter, dated 8th August, 1900.

Mr. J. van Kretschmar.

11 Oct. 1900.

shoeing horses, etc. Orders were received for all kinds of this work, and the military authorities were certainly consulted. Accounts for actual costs, with a certain percentage for general costs, were also sent in.

Some of the staff were commandeered for special service (work), such as destroying roads, bridges, etc., not in connection with our railway. This was done with my knowledge. We then agreed with the Government that they should receive the usual wages which we would pay, and which we would debit the Government with, but that they should be in the employ of the authorities under whom they were placed, and that we should only concern ourselves with their financial statements. There was not the slightest supervision on my part over their acts. The exploitation of the railway in Natal was carried out by my company by order of the Commandant-General. A complete staff was sent to Natal and increased by degrees. These received full wages, expenses in connection with their transference from one place to another were paid, and were supplied with the usual rations, because it was difficult for them to provide themselves with provisions where they were. With reference to these expenses they would have had to pay about the same if the aforementioned persons being available had had to do military service. The Government was debited with all the other expenses.

The Government paid £2 10s. per engine per diem, paid for all repairs, and was responsible for any loss of materials. One thing and another was regularly charged.

The company did not receive the proceeds in connection with the transport.

The arrangement with regard to compensation for the use of materials and staff in Natal is set forth in the letter to the Railway Commissioner of the 19th October, 1899.

The regulation of the (train) service and everything in connection with it was entrusted to the local officials, who received their orders direct from the military authorities. Only in cases where the organisation of the staff was concerned, financial matters, and special cases, when I wanted to keep intact the position we had taken up, did I interfere with the service. The latter case had reference, *inter alia*, to the so-called booty captured on the railway, carriages, locomotives, with regard to which I had effected an agreement.

The head officials in Pretoria also issued orders on this line when the same, after consultation with me or the Government, appeared necessary.

No railways were exploited by the Netherlands South African Railway Company in the Orange Free State. Before the outbreak of hostilities we lent the Free State Railways thirty engineers and stokers to replace the officials—Englishmen—who had fled. These persons received from the Orange Free State the same wages (full) as we paid them. No accounts were sent in with regard to this matter. At the request of the Director of the O.F.S. Government Railways I only settled with those of the staff who gradually came here when the occupation of the Free State was taking place, and debited the O.F.S. Government with the amount paid out.

The Orange Free State appointed Mr. Van Eelde in connection with the exploitation of the railway in the Cape Colony, and the N.S.A.R. Company was requested to deliver some locomotives and employees. The exploitation of this railway was particularly urged by the Transvaal, which had some commandoes at Colesberg. I pointed out to the director of the O.F.S. Government Railways that I did not consider myself bound to assist him in this matter without an order from the Transvaal Government, which had taken over our materials and staff. Surely if the Transvaal Government gave me such an order by virtue of its right of taking over our railway it must in that case be responsible for the consequences. This order was received by me after I had discussed and requested the same in writing.

I afterwards learnt that Mr. Van Eelde was supervising lines as far as Springfontein. I do not know whether our staff was ever employed north of the Orange River. The staff that went thither was asked to exploit the railway, and put in order the lines that had been destroyed. I learnt that they, after the retreat which had taken place shortly after the commencement of the exploitation, assisted in the destruction of bridges, etc. The conditions relating to financial matters imposed by me upon the O.F.S. were precisly the same as those for the railway in Natal.

As far as the destruction of bridges in this country as well as in Natal was concerned this was effected by the staff specially instructed by the military authorities for that purpose. For any destruction an order was duly demanded and given. Such order, however, was not always in writing.

Once the Transvaal Government employed our staff for the purpose of repairing a bridge over the Vet River at Smaldeel, O.F.S. The due preparations were made, but the work was not completed.

Dynamite from our magazine was delivered, and the Government charged for same. When our stock was exhausted we bought a fresh supply from the South African Explosives Company.

Article 22 stipulates that the Government takes the management of everything, on indemnification, a previous arrangement with regard to this indemnification, except in the above-mentioned cases, was not entered into. This was also not very necessary on account of the financial relations between the company and the Government. So long as the Government was still here no special damage was caused. What was monthly due for transport and work done would probably have been sufficient to enable the company to carry out all its obligations. Had this eventually not been the case then the Government would, in consequence of its obligation as far as guarantee was concerned, have had to make up the deficiency. It was only afterwards that the company sustained loss of capital. Under this head I include all expenses in connection with repairs of railway, culverts, etc., buildings, fittings, locomotives, material, etc. We have only been able to send in a few accounts for same.

An item to be discussed afterwards is one which I arranged separately as a head of expenditure in connection with the exploitation of the railway, under which was entered everything relating to the war, and that which under the extraordinary circumstances was necessary or expended. This is the account which appears in some books under the head of "Expenditure in connection with the political situation."

(Signed) J. VAN KRETSCHMAR.

Pretoria, 8th August, 1900.

ANNEXURE 1.

No. 17/2202 N.

Pretoria, 6th September, 1900.

At the interview which I had with you yesterday it appeared to me that you did not consider it necessary that the Government should make use of its right according to Article 22 of our concession to dispose of the railways, because you were of opinion that our company offered sufficient guarantee for the carrying out of the instructions which it would receive from the Government in the time of war.

Although I highly appreciate this confidence from your side, and I also do not doubt that it would not be put to shame, yet I am of opinion that in the interest of my company I must urgently request you that the Government should apply the said measure.

For what is the position? Every act committed by the railway in the service of one of the belligerent parties may be considered as an act of war, and should the chances of war unexpectedly turn against this Republic then it would be useful to us as a private company that our responsibility therefor should be covered by the Government.

For if the Government makes use of its rights, then the whole of our railway and the whole staff is, according to the concession, in the service of the State, and all acts performed by our staff may be considered as ordered by the Government.

For this only an executive council resolution is necessary, and notice thereof to me.

This resolution should, according to my idea, only contain the fact that the Government makes use of its rights according to Article 22 of the concession, and takes over the disposition of the railway, and that our staff will have to conduct itself according to the orders of the military officers and other authorities. It would also be advisable that the whole staff be commandeered to do service in their official capacities with the railway service apart from the possibility that they may afterwards be charged with the carrying out of military operations.

The position then remains the same as now, as we of course remain charged with everything, and so continue the service as long as possible, according to my letter No. 17/2163 N., dated 2nd inst.; we would then at the same time be authorised to continue, and if necessary to alter or stop the public service.

I request you respectfully to introduce an executive council resolution in that spirit to be passed.

The Management,
(Signed) J. VAN KRETSCHMAR.

To
The Government Commissioner for Railways,
Pretoria.

ANNEXURE 2.

Office of the Government Commissioner for Railways,
Pretoria, 20 September, 1899.

Confidential.

In reply to your letter of the 6th inst. with regard to the disposal of the railway by the Government, I have the honour to send you herewith the enclosed copy of Executive Council Resolution Art. 8585 d.d, 12 September, 1899.

On account of my recommendation that this Executive Council Resolution should not become effective until after declaration of war, the Executive Council has instructed me to carry the resolution into effect as soon as the necessity therefor shall have arrived.

I shall, therefore, when this appears necessary, inform you of the period from which the Government will take possession of the Railway.

The Government Commissioner.
(sgd.) J. SMIT.

The Management,
Netherlands S. African Railway Co., Pretoria.

Executive Council Resolution Art. 858, d.d. 13 September, 1899.

On the Order Minute 12830/99 (U.V.R. 1179/99), containing correspondence with the management of the Netherlands South African Railway Company with regard to Art. 22 of the concession of the said company, under which it is stipulated that in the event of danger of war or in time of war, or in the case of internal disturbances, the Government may in the interest of the defence or of public peace dispose of the railway and everything required for the use thereof, and may stop the ordinary traffic thereon wholly or partially, and order all such measures as may seem advisable subject to compensation to the concessionaire, and the request of the management of that company that the Government may make use of that right.

The Executive Council, having taken the advice of the Government Commissioner for Railways, and taking into consideration the fact that the State under the present circumstances and under the now existing political position is in danger of war, considering that under these circumstances it is possible that burghers may have to be conveyed to the borders in order to guard the same, and that it will therefore be advisable that the Government should have the free disposition of the railway. Resolves: to make use of its right according to Art. 22 of the concession approved by Volksraad Resolution Art. 502, dated 25 June, 1890, and to withdraw the railway, with everything appertaining thereto, and to the use thereof from the disposition of the management of the N.S.A. Railway Company and to take the same entirely under its own control.

In order properly to be able to make use of the railway the whole staff of the said company is commandeered under Art. 2 of Law 20 of 1898 to do service with the railways in the positions now occupied by them, and are placed under the commands of the Commandant-General and the military officers or other officials to be appointed by him on this understanding that they who can be spared from the railway service may always be commandeered by the Commandant-General to do the ordinary military service.

Further, the Executive Council resolves that the railway shall for the present and until further orders be exploited in the usual manner, and that the usual traffic and the usual running of trains will be maintained until the Commandant-General shall eventually alter the same.

ANNEXURE 3.

Pretoria, 29 September, 1899.

Under reference to my letter dated 20th inst., R.C. 1236/99, I have the honour to give you notice that I consider the time has now arrived to carry into effect Executive Council Resolution Art. 856 dated 13th September, 1899.

As from this date the Government of the South African Republic will therefore dispose of your railway lines in terms of the Executive Council Resolution aforesaid.

Mr. J. van Kretschmar.

11 Oct. 1900.

I request you to inform the staff that it will be required to carry out the orders given by the Commandant-General and the military officers appointed by him.

The Government Commissioner,
(sgd.) J. S. SMIT.

The Management of the N.S.A. Railway Company,
Pretoria.

ANNEXURE 4.

Annexure 4 is a circular issued by the Netherlands South African Railway Company to its various officials describing the manner in which the company proposed to carry out its service in the event of war being declared. This, with other Service Orders, is printed in the Note at the close of this day's evidence.

ANNEXURE 5.

No. 17/2057 N.

Pretoria, 16 August, 1899.

I have the honour herewith to send you Service Order No. 33, which will be issued within a few days.

From this you will see that we do not in any way wish to obstruct the taking of service under the Commando Laws, and that we even as against our staff are prepared to take obligations on ourselves which they could probably from other employers hardly expect.

With a view to the great interest which the Government, as well as we ourselves have that our service should be disorganised as little as possible, I take the liberty respectfully to call in your assistance as far as the provisions of Sub-section 1 of the service order are concerned.

I should therefore be glad to see that the officials concerned with the carrying out of the Commando Law are recommended to use some consideration with regard to the time when the persons commandeered be required for service in order to give us time to provide for our service.

I surely need not tell you that we will not make objections except on good grounds, but should the Government eventually not find it possible to comply with our request for dispensation, then I would consider myself discharged from all responsibility for the proper carrying out of the service.

The Management.
(sgd) J. VAN KRETSCHMAR.

The Government Commissioner for Railways,
Pretoria.

ANNEXURE 6.

No. 17/2082 N.

Pretoria, 18th August, 1899.

With regard to the conversation which I had with you this morning, and in continuation of my letter, No. 17/2057 N. d.d. 16th August, 1899, I have the honour to inform you that as long as the railway service must be carried out the following classes of persons can certainly not be spared to do commando duty:—The secretary to the management; the chief clerk at the office of the management; the heads of the branches of the service of the exploitation at Pretoria, and their assistants; the chief engineer and his assistants; the head of the signal and telegraph department; the chief superintendent and superintendents of the signal and telegraph department; the station-masters and persons acting as such; the linemen of the telegraph and the signalmen; the chief superintendent and superintending engineers; the chief of works; all engine drivers, apprentice engine drivers, and stokers; the traffic managers and their assistants; traffic inspectors; the controllers and guards; the chief of the central workshop at Pretoria, and his assistants, superintendents, and mechanics; the workmen attached to the central workshop and locomotive depots; the section chiefs of maintenance and lines and their assistants; the chief superintendent, superintendents, and assistant superintendents of the lines; the overseers and men; the chief controller and assistants; the chief book-keepers and book-keepers; the cashiers; the pointsmen; the signal men and rangers, together with their foremen; the tallymen and foreman tallymen. As regards the remaining portion of the staff it is not exactly possible to state in advance that they can be dispensed with, so that in this respect every case will have to be considered on its own merits. So, for instance, the necessary calculation will have to be made to see that the telegraph service be properly provided, and that shifts can

Mr. J. van Kretschmar.
11 Oct. 1900.

be supplied for all the station staffs, which, in order to have a good and safe carrying out of the service cannot continue day and night.

There must also be reckoned with the occupation of stations and provision in the locomotive and train service of the Free State if some of the staff leave the service there.

On the other hand, according to circumstances, it may happen that the above mentioned portion of the staff may become available. If, for instance, the train service should after mobilisation be diminished, a number of tallymen and guards will not be required any more. The same is the case with regard to the workmen at the central workshop and locomotive depôts when repairs to the rolling stock gets less. However, the assistance to be rendered to the War Department, such as repairs to cannons, arms, wagons, shoeing horses, etc., must be taken into consideration.

It will therefore be plain to you that only a small portion of the staff will be available immediately to do commando service which is clear as we do not have too large a staff in our service, and those now with us must be relied on to provide a proper carrying out of the service under extraordinary conditions.

When the service has once been contracted or stopped then I will send you a new return.

Netherlands South African Railway Company,
The Management.
(sgd.) J. VAN KRETSCHMAR.

The Government Commissioner of Railways,
Pretoria.

ANNEXURE 7.

Pretoria, 16 June, 1898.

With regard to your No. 261, Pp. 16364M., d.d 14th inst., I beg to inform you that the following has been decided upon with regard to the staff commandeered or called out to take part in the expedition to Swazieland:—

(*a*) Persons who in terms of the Commando Law are commandeered and can be spared by the company are guaranteed, in respect of bachelors one-half, and in respect of married men two-thirds of their fixed salary, namely, when the pay to be received by them amounts to less the company will pay up the difference.

Should anyone be commandeered who cannot be spared from the railway service then notice must immediately be given thereof in order to try that such commandeering be withdrawn by representation of the Government.

(*b*) Should anyone, member of a volunteer corps, be called out as such then leave may be given to him if the service permits it without salary.

If he cannot be spared then he must choose between not going out or getting his discharge.

Should the persons mentioned in sub-section (*b*) have any payments made for them in the Netherlands or elsewhere, then these will be temporarily stopped unless a certain amount be paid in to cover such payment or proper security be given therefor.

Although the staff temporarily leaves the service of the railway in both cases the company will continue to make the required payments for their life insurance, and such persons shall at the expiration of the campaign with the retention of their former seniority and pay be immediately taken on again in the service if their physical condition allows them to do so. I request you regularly to inform me who are commandeered or called out.

(sgd.) M. P. BARENDSEN,
Exploitation Service.

Traffic Manager, Waterval Boven.

A notice with the same contents has been sent to all section chiefs.

Pretoria, 1 November, 1898.

Herewith I beg to inform you that the following has been decided upon with regard to the staff that may be commandeered for the campaign against Magato:—

1. To the officials who are commandeered the company guarantees during the time of their compulsory absence, if unmarried the half, and if married two-thirds of their fixed salary. Payments made by the Government shall be taken in reduction of the amounts to be made up by the company.

2. Should the railway service require that persons who are commandeered should on account that they cannot be dispensed with provide a substitute, and their refusing to do so in order to go personally, then the aforesaid partial payment of salary lapses.

3. Persons who voluntarily wish to take part in the campaign may apply for leave to do so which will only be granted without retention of salary.

4. Payments in the Netherlands or elsewhere for persons mentioned in sub-sections 2 and 3 will be stopped during their absence unless the amounts to be paid out shall be paid in by them in advance or proper security given therefor.

You will kindly carefully find out in each case whether the person concerned has been properly commandeered.

Finally I request you to send me a return of the staff on your section which has been commandeered.

The Chief of the Exploitation.
(sgd.) C. L. PLATE.

The Traffic Manager, Johannesburg.

A similar notice of which this is a copy has been sent to all traffic managers.

ANNEXURE 8.

Pretoria, 9 March, 1900.

Dear Sir,

It has frequently happened recently that persons in the service of our company who have been commandeered for military service has applied to the Consul of his country in order to find out whether they can be compelled to do so.

In connection herewith it may perhaps not be unnecessary to inform you of the view which our company has adopted in this respect.

Before the commencement of the war we issued a service order No. 33 on behalf of those who on account of their nationality were compelled to submit themselves to being commandeered, a copy thereof we send herewith for your information.

When it appeared speedily that the traffic decreased considerably so that we could reduce the service, we got a much larger staff than we required, who under the existing conditions we were entitled to discharge.

We, however, considered that these persons also should participate in the advantage which was granted to those who were compelled to do military duty, of which offer many availed themselves.

Those who do not like this may, according to the provisions applicable to them, obtain their honourable discharge.

Humbly,
(sgd.) The Management.

Circular to Local Consuls.

ANNEXURE 9.

Volksrust, 14 October, 1899.

— Stipriaan, Esq., S.A.R. Company,

You will note that after having duly inspected the line Volksrust and further on, the same must be worked by you on behalf of the military service. As soon as the guarding of the line has been arranged I will give you notice so that you may start.

I have the honour to be, your humble servant,
(sgd.) Commandant-General P. J. JOUBERT.

ANNEXURE 10.

Pretoria, 19th October, 1899.

Whereas it has now become a fact that my company carries out the exploitation under the orders of the Commandant General up to the station Dannhauser, in Natal, 61 miles from the border, and it is to be expected that we may be charged with a further exploitation I propose that the following measure be taken with regard to the compensation therefor, namely:—

1. The Government shall pay my company rent for locomotives serving outside the borders £2 10s. per 24 hours, and per locomotive.

2. That no rent be calculated for the use of trucks and carriages.

3. The Government shall refund to us one-half the salaries of the staff serving outside the borders, calculated according to the ordinary payments to which they are entitled.

4. The Government shall compensate us for the use of material for the exploitation, such as coal, oil, grease, lighting, telegraph requirements, etc.

5. For the use of tools, telegraph apparati, etc., no rent shall be charged, but the Government will refund to us the inventory price if those articles should fall in the enemies' hands, and we are not in a position to get them back when peace is declared.

6. The Government will also refund to us the inventory price of locomotives and other rolling stock which we may lose in the manner as indicated in sub-section 5.

7. For all repairs to rolling stock caused outside the borders the Government will refund us the actual cost.

8. For the conveyance to the border of rolling stock and exploitation requirements on behalf of the line in Natal nothing shall be charged.

9. We shall make no charges on the line in Natal, and consider all traffic as effected in the service of the Government. Private traffic, except if intended for or on behalf of the troops of the Republic, which will be gratis, shall be excluded.

I shall be glad to have your approval of this as soon as possible.

The Management,
(Signed) J. VAN KRETSCHMAR.

The Government Commissioner for Railways,
Pretoria.

ANNEXURE 11.

798/28816 N. November 28.

In connection with the telegrams of the 18th inst. and of yesterday from the Management, and in contradistinction to my letter of the 23rd inst., 798/28701N, I am instructed by the Management to inform you that they have agreed with the Government Commissioner for Railways to act with the goods of the Natal Government Railways as follows:—

1. A proper inventory shall be made and handed to the Government of the locomotives and the rolling stock. Of this rolling stock we may make use if required. The locomotives and cranes shall be sent to the C.W.P. for safe keeping.

2. The coal, lubrications, waste, paraffin, etc., in short, all stores which may be found on the stations of the Natal Government Railways may be used by us on the Natal section without further account to the Government.

3. The materials for the line, such as rails and small iron work, sleepers, timber, cement, bridge supports, etc., as far as not required for the exploitation in Natal must be sent up to Standerton, where they will be put on the inventory. They will be listed, and a receipt given therefor to the Government. For the proper taking of the inventory the maintenance department at Standerton will provide.

4. Spare parts of trucks and locomotives, axles, wheels, etc., must be conveyed to Johannesburg, where they will be put on the inventory by the traffic department, and treated as in sub-section 3.

5. Of the station inventory only that must be sent up which is not required for the exploitation of our service, and then only in so far as the removal of the goods may be necessary, in order not to leave the stations in a serviceable condition when we must retire.

It is therefore not desirable to send up bascules, copying presses, automatic weighing machines, pigeonholes, and the station furniture unless there are some objects among them which you may consider especially useful to our service, but telegraph apparati and electrical installations, and everything appertaining thereto should be sent.

It has been thought here that there has been sent up what is absolutely useless and broken: for instance, wagon cranes and a stone crusher, in addition to much furniture and parts of buildings, water tanks, etc. Those goods should have remained where they were.

Also a locomotive, "John Robinson," has been entrained, which probably is the property of a mine, and therefore, as private property, should not have been considered as loot.

With the sending on attention should be paid as far as possible to the above-mentioned destinations, but for convenience sake you may send everything to Standerton, from where, after sorting, the sending on to Johannesburg will take place. If sorting could be done without discharging much labour will be saved.

The freight must be charged by Volksrust to the debit of the Government up to Standerton, and by Standerton up to Johannesburg. *Mr. J. van Kretschmar.*

11 Oct. 1900.

Netherlands South African Railway Company,
Exploitation Service,
(Signed) J. F. L. VAN HASSELT.

G. J. Van Stipriaan, Luiscius, Newcastle.

Copy to the Chief Engineer, Pretoria.
Locomotive Superintendent, Jh.
Chief Traffic Manager, Jh.

Chief Central Workshop, Pretoria.

Traffic Manager of S.E. Line, Stan.

ANNEXURE 12.

RcR 246/00
Rc 80/00.

Pretoria, 19th February, 1900.

In reply to your letter of the 19th inst, 17/82 O, I have the honour to inform you that I, on behalf of the Government, hereby instruct you to assist the Orange Free State Government Railways as much as possible with everything as may be within your power, such as locomotives and other rolling stock, one thing and the other, in terms of the right of disposal which the Government exercises over your railway, in accordance with Article 22 of the concession.

The Government Commissioner,
(Signed) J. S. SMIT.

To the Management
of the Netherlands South African Railway Company,
Pretoria.

458. Your company was constituted under Articles of Association which I have before me, and is known as the Netherlands Railway Company.

(*Articles of Association put in.*)

Letters of Incorporation granted to the Corporation The Netherlands South African Railway Company, according to Law No. 6 of 1874.

Registered on the Register of Companies, kept at Pretoria, Book D., Folio 382, on this 23rd day of July, 1889. (Signed) J. C. MINNAAR,
Registrar of Deeds.

Whereas, on the 21st June, 1887, before the Notary Jean Charles Gerard Polloues, residing at Amsterdam, a notarial deed was passed and approved by the Royal decree of the 2nd July, 1887, by virtue of which a corporation was established bearing the name of "The Netherlands South African Railway Company.

And whereas an application has been made to the Government of the South African Republic to incorporate the said company with limited liability under the laws of this Republic.

Taking into consideration Law No. 6 of 1874, and the advice of the State Attorney and Executive Council Resolution, Art. 327, dated 7th June, 1889, which reads as follows:—

On the Order Minute R4805/89, containing an application from the Netherlands South African Railway Company for incorporation in the South African Republic, under Law No. 6 of 1874, together with the Articles of Association.

The Executive Council, taking into consideration the disadvantages to the country if such company were unconditionally incorporated in the South African Republic, and having read the advice of the State Attorney, and being of opinion that it would be in excess of its responsibility to consent unconditionally.

Resolves to grant the application and hereby to issue letters of incorporation on condition that this Executive Council Resolution be registered, together with the statutes of the Company (limited), at the office of the Registrar of Deeds, making mention at the same time where "domicilium citandi et executandi" is chosen, and further that it be published with the statutes of the company (limited), together with the deeds pertaining thereto in the Government Gazette of the South African Republic, within three months from date, and further that the Registrar of Deeds shall see that the provisions of Law No. 6 of 1874 be complied with, and under the further express stipulations and conditions that no authority be given hereby, or that the company be allowed to carry out any of the conditions of the statutes which may be found to be contrary to the interests of the country.

Mr. J. van Kretschmar.

11 Oct. 1900.

Now, therefore, his honour the State President with the consent and advice of the Executive Council of the South African Republic, has been pleased to grant the application, and hereby issues letters of incorporation with limited liability, as is hereby done to the said corporation, "The Netherlands South African Railway Company," in the South African Republic, subject to the conditions as contained in the aforesaid Executive Council Resolution.

And be it further understood that the "domicilium citandi et executandi" of the company shall be at the office of the chief engineer of the Netherlands South African Railway Company, Market Street, Pretoria, in the South African Republic.

Given under my hand at the Government Office at Pretoria, in the South African Republic, the 28th of the month of June, in the year of our Lord one thousand eight hundred and eighty nine.

(Signed) S. J. P. KRUGER,
State President.

(Signed) Dr. W. J. LEYDS,
State Secretary.

459. These Articles of Association were confirmed by Royal decree in Holland?—Yes.

460. Do you know the effect of a Royal decree?—The effect is that it is generally approved, and a copy of that decree is in our office.

461. Are all limited companies approved of by Royal decree in Holland?—Yes.

462. Then you have a certificate of incorporation dated 21st June, 1887?—Yes, I am not sure of the date of incorporation. I think it is later, but we have it here.

463. When did you become managing director?—Last year, on the 1st July.

464. What position did you occupy in the company before that date?—I had the title of administrator. I was replacing a director at home in Amsterdam. I was his assistant.

465. Whose duties did you take over in South Africa?—Mr. Middleberg's.

466. When did you do so?—On the 1st January, 1899, or 31st December, 1898.

467. And before that you had occupied the position of administrator in Holland?—Yes, I replaced any directors when they were prevented from duty.

468. You were not on the directorate, but acted as a substitute for a director when he was absent for any reason?—Yes.

469. At that time was there a managing director here?—Yes, Mr. Middleberg up to the beginning of 1899.

470. And there was a managing director in Holland? Who was he?—Mr. Van der Wall Bake, whose duties I replaced from time to time.

471. Were they the only managing directors?—Yes.

472. Were the managing directors under the supervision of the Board of Commissioners?—Yes.

473. Since you have become a managing director has there continued to be one in Holland?—Yes.

474. How many Commissioners are there?—The Board of Commissioners is between five and eleven. and I think there are at present nine, but I am not quite sure. One died last year. At present I think there are eight or nine, with two managing directors.

475. And the majority of the whole, that is to say both Commissioners and managing directors taken together, have to be Hollanders?—Yes, but that is separately determined in the Articles of Association.

476. There can be two or three managing directors, and two at least have to be Hollanders, and if there are only two they must both be Hollanders; and there must not be more than eleven or less than five Commissioners, but the majority of the Commissioners must also be Hollanders?—Yes.

477. How often did the Board of Commissioners meet?—Quarterly, but sometimes extra meetings are called when necessary.

478. The managing directors do not have a vote?—No, simply an advisory vote.

479. Questions of policy and all important matters were always submitted to the Board of Commissioners?—Yes.

480. I suppose the ordinary course of administration would be left to the managing director out here?—Yes, the managing of the railway, but the financial policy of the railway was arranged in Holland.

481. I will not ask you the actual details, but it seems that a large sum is set aside for the remuneration of the Commissioners and Directors—upwards of £50,000 a year?—No. No sum is fixed; it depends upon the results of the working of the line.

482. But as a fact last year up to June, 1899, I think that amount came out at something between £50,000 and £60,000?—I do not think so. It is in the yearly record.

483. The expenses of the direction in the Netherlands are put down at £15,607, and the expenses of the direction of the railway in South Africa at £13,000 odd, including salaries and premiums to employees?—There is nothing extra for the directors in that sum.

484. Are you sure of that?—Quite sure, but the books are in Holland.

485. But we have the balance-sheet, from which it appears that there are elaborate details with regard to the staff here. How do you account for there being separate items of the staff, their bonuses and salary, if you say their salaries and bonuses were dealt with elsewhere in the balance-sheet?—There are some other expenses included in that sum.

486. Is there nothing except the salaries and bonuses to make up this £42,000?—There is nothing about bonuses to directors, but I cannot give all the details.

487. If that is so, can you account for all the other items with regard to the staff being specifically set forth thereafter?—I cannot explain without the accounts being in front of me. I do not know how these various sums have been distributed. It is a question of book-keeping.

488. So far as it appears on the face of it this payment was not for directors?—It is for "general service," and not only for the directorate. There was the general office in Pretoria, the Traffic Office, the Local Superintendent's Office, all these departments had to be dealt with.

489. Are you prepared to say how much was paid to the directors of this sum of £42,000?—Ten thousand pounds to the directors, that is the only item included in that sum. That is the salary of the directors. The Board of Commissioners did not get anything at all. It is not ten thousand pounds sterling, but ten thousand florins.

490. Did they not receive 5 per cent. of the profits?—No, it is equally divided between the staff, the managing directors, and the Board of Commissioners—that is provided for in the Articles of Association.

491. Apart from that 5 per cent. they do not get any salary?—They get their travelling and lodging expenses defrayed when they are travelling in the interests of the company.

492. When you were in Holland you were well acquainted with the business of the managing director there?—Yes.

493. Was there constant correspondence passing between the two managing directirs?—Yes, privately.

494. Was there correspondence between the managing director here and the Board of Commissioners?—No, none whatever.

495. Of course, the letter book containing any such correspondence is in Holland?—Yes, but that is entirely private. It is not the property of the company.

496. Whose property is it?—It is their own property, they are not obliged to correspond.

497. But the correspondence which took place between the two managing directors and the Board of Commissioners is recorded?—There is no correspondence, only that between the mangaging directors themselves.

498. If there was any correspondence between the Board of Commissioners and the managing director here, would records of that be in Holland?—I do not know; we have never had correspondence.

499. I suppose about the middle of 1899 you began to anticipate the probability of war?—Yes.

500. Can you say how soon you began to take measures, was it as early as June or July?—I think I have written that out in the diary which has been seized, but there might have been something before that.

501. I suppose you very carefully considered the position of the company if war were to break out?—I cannot say I considered it carefully. I thought we had to stick to Article 22 of the concession. That explained everything.

502. Upon whose advice or with whose assistance did you form your opinion as to the construction of Article

22?—I cannot say that anybody assisted me. I formed an opinion on my own account. There has never been any doubt about it.

503. There is no doubt about it in your own mind?—None whatever.

504. Did you consult with nobody as to what the meaning of Article 22 was?—No.

505. Nor as to the obligations which were imposed upon you?—No.

506. Had you considered the matter before in relation to any question of war?—Yes, during the Jameson Raid.

507. But that was not war?—We had the same thing at that time.

508. You considered it as far back as 1895?—Yes, and also in connection with the Kaffir Wars.

509. Were you in Holland at the time of the Kaffir Wars?—Yes.

510. The construction of Article 22, the obligations of the company, was, therefore, considered by you in Holland?—Yes; but it was also considered by Mr. Middleberg here.

511. These obligations were considered by Mr. Middleberg and also by you and your people in Holland?—I do not remember that we considered them particularly at the time.

512. You do not wish to represent that your Board of Commissioners did nothing for their money?—How do you mean, the Board of Commissioners in Holland?

513. The Commissioners received a portion of the profits of the railway. What did they do for it?—They had meetings four times a year; they consulted the directors, and the directors consulted them.

514. And you told us at the beginning that the Commissioners supervised them upon all important questions of policy?—Yes.

515. Having told me that, I have no doubt you will be able to tell me whether they consulted upon questions of policy with regard to the war?—I suppose they did.

516. You know from your previous experience that that would be the ordinary course?—I do not think that the directors would have consulted previously, but only really as to what had been done if it came between two meetings of the board. I do not think the question of war would involve an extra meeting.

517. But surely the policy of the company on the question of war would be considered by the directors and Commissioners, and you have told us that the Commissioners were obliged to supervise the action of the managing director here?—I cannot say. Possibly in the ordinary course that would be so.

518. Have you ever had any remonstrance or objection made to what you did in regard to the war from the Board of Commissioners?—No.

519. And you have told us they were fully informed as to what you were doing?—I think they were—yes.

520. Your report for the year 1899 has been published on June 7th?—I just got it the day before yesterday.

521. In the ordinary course of business, was this report submitted to the Board of Commissioners?—I do not know. I have not had any letters since 23rd April. I do not even know that that meeting was held.

522. Section 38 of the articles of association provides that the financial year commences on the 1st January and ends on 31st December, that the managing directors have to frame a balance-sheet, and have to hand it in before the 1st January to the Board of Commissioners. Is that what occurred on this occasion?—I do not know.

523. Did you frame the balance-sheet?—No, that is framed in Holland. I supply the material.

524. Did you supply it in order that it might be laid before the Commissioners before the 1st June?—Yes, I supplied it in March.

525. Cannot you tell us from your own knowledge (and you had been managing director in Holland) whether the ordinary course was for these accounts to be submitted on the 1st June?—Generally the whole lot were ready in May, and the general meeting was held in the first part of June.

526. Was that a meeting of Commissioners only?—No, it was a meeting of shareholders.

527. And the report would then be read and considered?—It was not read, it was too long; it was deposited, and they could get it. It was printed, but it was not circulated. It was announced in the papers. Anybody could come to the meeting and could see the report there, and take it home.

528. So far as you know there would be no objections to that report?—No, I have received no letters since April.

529. When did you finally resolve as to the policy your railway was going to pursue if war had broken out?—I cannot say. I was quite prepared. We had to do it.

530. I think you refer to this at the beginning of your statement?—Yes.

531. Were you familiar with Article 2 of Law 20?—Yes, I took the trouble to look at it then.

532. (*Chairman.*) I will read that article to you:—"The State President, with the consent of the Executiv Council, gives orders for a commando, but in case th Executive Council cannot meet in time, then the Stat President, on the advice of the Commandant-General ma do so on their own responsibility." That did not enlighte you much as what they were doing?—No, I am afrai this whole question being at present dealt with in Europ my position is now being prejudiced very much.

533. They are not now giving evidence in Europ At present we have the right to examine witnesses, an they are in duty bound to answer our questions. Hithe to you have answered very satisfactorily. The resolutio of the Executive Council resolves that the railway sha for the present, and until further orders, be exploited i the usual manner, and that the usual traffic, and th usual running of trains, will be maintained until the Con mandant-General shall eventually alter the same. The in your statement you say in his letter of the 29th Se tember, the Railway Commissioner informed you th the Government had taken over the railway from th 29th September. There was no further correspondenc about this matter. Service Order No. 36, was then i sued. By whom was Service Order, No. 36, drawn up —I suppose it was done by myself.

534. And did you communicate it at the time to th managing director in Europe?—All these service orde were sent to Europe.

535. Did you in fact give orders to your staff, whic they obeyed, to dismiss employés who would not go c active service when commandeered?—They could not di miss men. It was only done by me. My staff reporte on the matter, and I decided.

536. Some of your staff have been examined els where? Is it not a fact that men who refuse to go c commando, and were in your service were discharged?—It was reported to me, and if they did not want to g they were discharged. I did not want to force them. they had gone on commando they would have been pa their commando salary.

537. Those who went on commando were paid tw thirds of their salary if they were married men, and bachelors they were paid half salary; and if they we so timid as to refuse to go on commando when asked th Netherlands Railway Company discharged them?—Th was an arrangement with the Government. I had to t them which men I could spare, and I did so, but I did n commandeer the men.

538. In the first place, do you know that the Goverı ment has no right to commandeer the subject of a friendl State?—No, I do not know that.

539. Then I suppose that you did not point that ou Do you not know that communications had taken pla between some of these men and their Consuls on the que tion of their obligation to serve?—Yes. But they coul object for themselves.

540. Supposing you, yourself, were living in Germany and a war was going on between Germany and England Do you suppose that the German Government could com mandeer you to fight?—No.

541. Why did you not tell your employees that n Government had a right to force the subject of a friendl State to take up arms and engage in a war with tha friendly State? You knew it?—It was a question fo everybody to decide individually.

542. (*Chairman.*) You must allow me to point out tha these men did refuse to enter the service of the Trans vaal Government against a friendly power, and your rail way dismissed them?—Yes, I dismissed them. I ha always a right to do so.

543. You go on to state: "The position of my company towards these persons was explained in a letter to thei Consuls. I could find no reason why these persons should enjoy greater advantage than those who were compelled

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to do military service, and that I should thus retain them unemployed in our service." You also say: "The arrangement with regard to compensation for the use of materials and staff in Natal, and the exploitation of the railway in Natal was carried out by my company by order of the Commandant-General." What was the arrangement? What booty was captured on the railway?—All the stuff they found on the railway they regarded as Government goods. They considered I was responsible in giving a list of such goods, and handing them over.

544. You refer to the booty found by the Boers?—It was unprotected, so it was taken. It was considered as property of the Government, and accounted for to the Government, and I stored it.

545. You say you interfered only where the organisation of the railway staff was concerned?—I interfered on several occasions.

546. (*Mr. Ashmore.*) Rolling stock belonging to the Natal Colony was also used?—Oh yes, and other stuff, such as stationery, tools, etc., which was taken and stored by me.

547. You further state: "The head officials in Pretoria also issued orders on this line, and no railways were exploited by the Netherlands S.A.R. Company in the Orange Free State before the outbreak of hostilities." You lent them thirty engines and stokers to replace the English officials who had fled; and you say, "I do not know whether our staff was ever employed north of the Orange River. The staff that went thither was asked to exploit the railway and put in order the lines that had been destroyed. . . . . As far as the destruction of bridges in this country as well as in Natal was concerned this was effected solely by the staff specially instructed by the military authorities for that purpose. For any destruction an order was demanded, and given." Have you a record of these orders?—They were mostly telegrams; I have a lot of them.

548. If we gave you access to your papers, probably you would be able to show all the bridges which your staff destroyed?—No; I did not get these things. They were not sent to me as a record, and what I have is mostly telegrams.

(*Mr. Hulstein.*) I think I must state I will produce them by and by.

549. (*Chairman.*) (*To witness.*) With reference to your remark in your statement regarding indemnification as stipulated in Article 22, you have prepared an account of expenses in connection with repairs of railway culverts, etc. That account appears in some of the books under the head of expenditure?—Yes. It is a correct statement so far as it goes, but it is not very complete. I only prepared it in order to facilitate the enquiry by Mr. Van Hulstein.

(*Chairman.*) You shall have a full chance of adding anything you wish to that statement.

(*Chairman.*) Coming now to your diary in August and September, 1899, I shall read the English translation, and I desire you to compare it with the original.

Mr. Van Kretschmar's Diary.

"It has surprised me that the Transvaal Government has up to the present paid so little attention to these preparations. On the 21st July I wrote a letter to Gen. Joubert to impress upon him that he should, anyhow so far as the railway might be concerned in the defence, give some suggestions with regard to the traffic that might be expected, the destruction of railway lines, etc. As a consequence thereof I had an interview with him a few days later, from which it appeared to me that he had absolutely no plan of defence. He had heard that in Natal there was a special armoured train ready with which the country would be invaded. He wished to oppose this by letting a locomotive run against it. I told him that this would be a very difficult thing to do, because the exact moment to start that locomotive could not be determined in advance, and that there was much chance that either the collision would be prevented by the Natal train, which would, of course, advance very carefully, or that the undirected locomotive would not go far enough or with sufficient speed, or that it would not arrive at its destination. It would require much good luck to make this attempt succeed, especially because it must be presumed that the enemy would take possession of the telegraph at each station which he would pass with the armoured train. The General, however, was not open to any other plan, and only lamented the unpleasantness of carying on a war; that the Transvaal was not prepared for it; had not taken sufficient care of the friendship with the Cape Colony which had been neglected for years, and which now, too late, had again come into existence; that now no assistance could be expected from that side, because the Boers in the Cape Colony were not armed, and that all that was to be done now was to try and avoid war. I left him with the impression that, as far as he was concerned neither assistance nor leadership was to be expected, and asked him only to give me timely notice if mobilisation was decided upon, so that I might have the necessary rolling stock quickly at the required place when necessary. Some idea as to places where horses and burghers would have to entrain he was not able to give me. The most would be from Pretoria. I must now make mention of some of the principal facts which I became connected with, and through which I came in contact with the authorities.

On Wednesday, the 16th August, I received information from the Agent Gubler, German East African Line, Lourenco Marques, that the Portuguese Governor refused to give his consent to the landing of the shipments of ammunition which had arrived by the "Reichstag" and "Koenig." I went to the General, who was at home. He exclaimed, "But this is war; we can therefore see that it will help us nothing to preserve peace; the English want war." I had to admit this. After a long conversation it was resolved that I would wire to the agent to go to the Consul, and send someone from my office to Lourenco Marques to inquire into matters. This happened on Friday, the 17th inst., and news arrived from the agent that no permission was to be got from the Governor, and that the cartridges were to be put in a Portuguese man-o'-war. This also I informed the General of. I said that it was now getting time to call out the commandoes as war was now clearly in sight. "No," he said, because nothing more could be done to-day. The following day I went to Smit, and said that the General was not to be moved, and that eventually we should be attacked entirely unprepared. Smit called the General names, and promised me to go and see the President. It was a great shame that the General did not enable me to take some preparatory measures. As a consequence thereof on Saturday, the 19th August, I was called into the Executive Council, when the President asked me what I intended to do if the English should attempt to enter into the country by rail. I said that I did not think this would be very easy, as, in a hostile country, it would not be easy to run a train on an unknown line, and to do this the line would first have to be cleared by their own troops. "Yes, but it was expected all the same that something of the kind would be attempted, as it was certain that Natal had an armoured train in readiness." I then said that the proper means to delay such a train for a long time would be to destroy a large bridge. For this might be considered in the first instance the 50 metre bridge at Standerton. It might first be tried to find another proper point where the line might be destroyed in a similar way, and where the hostile train might be detained and taken under fire, and only if that point were lost it would be necessary to decide on destroying the larger bridge, when the enemy might then be held back there for a considerable period. A proper signal or telegraph service should be prepared by the Field Telegraph Company in conjunction with our station, so that the proper moments for the destruction could be defined. On this some discussion arose, in which the General appeared as an opponent, but in general my suggestion was approved of. I said that it was unnecessary here to enter into details, as it would be better to have the plan worked out by the military and railway experts who had to carry out the work. It could then be fixed in detail, and all preparations could be made. This was agreed to, and the General would instruct Commandant Trichardt of the State Artillery with the Chief of the Telegraph Company, Paff, to arrange things with me. They were to come to me that same afternoon. I considered it necessary to have Steinmetz and Van der Geoot present at the interview, and, as these had gone to Krugersdorp to have a look at a mine, I telegraphed to them immediately to return. They arrived at about five o'clock, when Trichardt and Kroon were with me again to discuss our plan and to give it definite shape. There now remained the chosing of the proper place where to detain the enemy in the first instance. The idea was that Trichardt should go and find out for himself. We persisted that he should go as soon as possible and got him so far. Already at six o'clock

he was in the Natal train with Kroon and Westenberg. I must now state that on account of the tardiness in receiving instructions, and on account of the danger continually increasing, I had already made some provisions with regard to the telegraph lines, so that it would not be so easy for an enemy immediately to cut off all communications. On the stations between Volksrust and Standerton there are, namely, hidden signal keys placed so that telegraphists who are prevented to continue their service at the ordinary apparatus, yet may be in a position to send on a warning. Naturally I could not guard against the cutting of wires, but by a compulsory signalling of a certain sign at fixed times the non-sending thereof could be taken to be a sign of alarm. I have also already sent some dynamite to Standerton, and purchased two electrical apparati with wires, in order to be ready when the destruction of the bridge might be decided upon.

21st August.—Commandant Trichardt and Lieut. Kroon of the State Artillery came this morning to report with regard to their visit to Paardekop. Westenberg had already given me the result of the investigation in writing. The best place to cause a blocking on the line was a stone culvert at kilometre 38, which would have to be destroyed by dynamite. This place was so beautiful that Trichardt said that not a single man would come out of it alive, and that the destruction of the bridge at Standerton would then be unnecessary. I said this was very fine if care would be taken that at that place there would be artillery and a commando. He admitted this, and would immediately recommend it to Joubert. We all feared, however, that the latter would not give the order, and I said that if this did not take place there would be nothing left but at the first signal of alarm to blow up the bridge over the Vaal at Standerton. For this purpose, then, there would be an officer of the artillery at Standerton to give the necessary order and to take upon himself the responsibility. The blowing up and the preparations we would carry out. This bridge would anyhow prevent the coming through by rail, and probably afford sufficient time to call up the commandoes, even though the enemy would be enabled to come into the country a good distance. Trichardt should immediately go to the General, but I learned nothing further about it to-day. I had in the meantime the necessary dynamite sent to Standerton and Paardekop as well as the electrical apparati. Two old service overseers were detailed for the work, and the second engineer, K. Burger, who got frightened and asked to have no responsibility for the proper carrying out, was replaced by his assistant, Swemer. The names of the two overseers are Von Pelzer Barensburg, who has served in several European armies, and Schoof, an old sergeant of the Netherlands Engineers. This afternoon I was again called into the Executive Council to explain to the President how the through traffic was arranged from Lourenco Marques, and to whom consignments for the Government were officially addressed. From the bills of lading which I fetched I could show that the Government was mentioned as a consignee, and that therefore there could be no misunderstanding on the part of the Portuguese. Leyds had cabled that England had requested Portugal not to send arms and ammunition through for a country which was disputing with England, trusting that the Republic would by these means trouble Portugal, and probably compel it by armed force to send on the consignments, after which there would be reason for intervention. Clearly a proper cause for war is still being continually looked for. It was resolved that the Government should once more wire to Pott to find out for what reasons the sending on of a consignment addressed to the Government was being prevented, and to ask this of the Governor-General. Also that a wire should be sent to Leyds that the consignment was addressed directly to the Government and therefore that it was impossible to pretend in Lourenco Marques not to know this. Returned to my office, the official, Leliveldt asked me whether we could not appeal to our Consul, because we as a Netherlands company were arbitrarily prevented by the Portuguese from carrying out our obligations which we had taken upon ourselves under the transmit way bills. Accidentally Domela Nieuwenhuis just turned up, and we decided to send a cable to the Netherlands Government, with a request to intervene with the Government at Lisbon on our behalf. We prepared this cable this evening at Nieuwenhuis's, who will send it on to-morrow. I learned from Nieuwenhuis confidentially that the Government had now sent its reply, that it appeared to him that this made the war impossible, as it was prepared in a conciliatory spirit. I am of opinion that all giving in will only lead to further claims, and that unless one is prepared to give in to everything that is asked it will be impossible to prevent war, although by new negotiations it may be postponed for a little while. This does not improve the chance for the Boers. I always believe still that keeping on and making some kind of a show of earnest preparation will still be the means of making England draw back. These tactics, however, do not appear as if they will be followed. To be complete I must here add that Commandant Trichardt advised that the tearing up of rails should be carried out by artillerists, and that these should be taught beforehand at Pretoria in the use of keys to loosen screws; he would act accordingly. On account of the news from Leyds, the President said "They will not catch me on this. I will not make a row with Portugal. The ammunition can remain."

22nd August.—The situation appears to me to be entirely unchanged. Trichardt has not come back. At two o'clock the President sent for me; he was with A. D. W. Wolmarans in the room of the Executive Council. He asked me what was done with regard to the resolutions which were taken in the Executive Council on Saturday. I informed him in detail the plan which I had made with Trichardt; that the latter had been to Paardekop with Westenberg, and that they had considered it practicable. "Have you now again consulted with the General?" "No, President, the Commandant said that he would again come to me. Since yesterday morning I have, however, heard nothing from him." "Then the General will have done nothing?" "I think so," to President, "I would like you to instruct Commandant Trichardt to act with me direct, for the General does not want to have anything to do with preparations." "Yes, that plan is good, and it is a fine place near Paardekop; it is the finest place that I have seen in the Republic. We will deal with the matter early to-morrow morning." I still impressed upon the President that it was absolutely necessary that the place where the blocking was to be made be covered by a commando, or by artillery, or by both, and that orders for the blowing up of bridges could be carried out by us, but could not be given by us, and that we could not take the responsibility therefor, whilst the proper moment should have to be decided by the military authorities. This evening I visited Smit, the Railway Commissioner, and told him fully what I had discussed and done. He was wild with the General, who continued to do nothing. The intention existed in secret session of the Volksraad to inquire what preparations he had made, and, if he could not satisfactorily reply then to take away the direction of the defences from him. I repeated that months ago I had already pointed out the necessity to receive instructions, and had always asked for them officially, but that the General always remained inactive, all what was being done was outside of him. The newspaper states that Portugal has declared that the request of England is to require better guarantees that the ammunition detained in Lourenço Marques is really for the Government. N.B.—It is mentioned on the bill of lading, and the invoices have also been produced.

Thursday, 24th August.—This morning I was asked per telephone to attend at 3 o'clock this afternoon the Executive Council. Everything appears to be calm to-day. The morning papers only contain glad reports. I was therefore surprised to find that Trichardt and Kroon were also in the Council, and that the sitting was very solemn. Besides the President, Cronje and Wolmarans were also there. The General was called in. The point to be decided was what was now to be fixed with regard to the defence. The plan decided upon by me in conjunction with Trichardt was approved, and would be worked out with them in detail. The General proposed the calling out of the Artillery before England was asked for an explanation with regard to the movement of troops in Natal. As a matter of fact this had not taken place yet, and therefore nothing should be done from this side before that time. If the Artillery left the camp it would be to shoot, and England might rightly consider this to be a hostile act. Wolmarans also considered this responsibility too great even though the probability of peace was only hanging on a silk thread, and he thought that nothing should be done, and to warn the local commandants and field cornets to assemble at Paardekop at the first alarm. Trichardt preferred to go there with his guns, because he, as well as the President, thought they might not arrive in time, if the English, by assistance, had the railway line near Pretoria made useless. Then it would take at least three days before he could

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be there. Many suppositions were made, for instance, entrance from other sides, rebellion in Johannesburg, the taking of the fort there, etc., but they were agreed that the greatest danger at the moment was at Standerton. The General was not of opinion that they would enter with a large force, but that they would make their camp near Amajuba, and operate from there steadily. At last we agreed that, in any case, the proposed measures should be taken. Trichardt came to my office a little later on, and I gave him, in general outlines in writing, my ideas, which he would take to the General. It is unpleasant that Swemer made stupid remarks to the Landdrost at Standerton, through which the latter became restless and has written to the Government. It will not be easy to keep the matter entirely secret. Later on I was still with Smit, who did not like that he was kept outside of everything. I would also have much preferred it if he were directly brought into the discussions, and wrote a letter to that effect to Wolmarans. My impression in the Raad was that peace was now almost impossible. It appears therefore that an unfavourable reply had been received from London to the latest proposals from this side. All, however, are very calm, and I even thought to perceive that they gladly submitted to the possibility of war as a solution to the crisis. With all burghers to whom one speaks there appears to exist the firm conviction that they can beat the English and can throw them back into Natal. The entire trust, however, is on the commandoes, and not on the artillery, nor on any other contemplated artificial means. This evening I went on working with Lohmann and Van Hasselt calmly on the draft railway convention, as if there were no war in the air; however, the desire to work was not great, and on several occasions the situation was discussed.

Saturday, 9th September, 1899.—Many days I have written nothing. There was no definite news. One day it seemed as if the war was about to break out, the next it appeared as if a possible solution was found; some despatches were exchanged with Chamberlain; negotiations carried on with Greene, and the impressions to which I came changed with the persons to whom I spoke. On Tuesday, the 5th September, I was again called to the Executive Council; this is always done per telephone, and one hears in no way of the subject which is to be discussed. This time it was in order to hear what I had arranged with Commandant Trichardt since 24th August. I had to say that, as far as I could take measures for the blocking of the line at Standerton and Paardekop, everything was in order; but that since our last interview I had not seen Trichardt, and also not the Commandant-General. The latter, being interrogated on the subject, said that he had left everything to Trichardt, and he had not considered it necessary to consult with him. I said that it was absolutely necessary that I should be recognised in the measures to be taken, because our staff could not act without my instructions, and I had to receive my instructions from the authorities. We did not get on any further on this point as the General did not choose to remember anything on the point of giving instructions. I had therefore to arrange with Trichardt. Before I went away the President asked me whether I knew that a number of 4,900 men had left Charlestown for Laings Nek. I did not know anything about it, but I would telegraph to Volksrust and then inform him. The answer which I received in the afternoon was that nothing was known of it; since then nothing has been heard of it. On the same day I wrote a letter to Trichardt, asking him to discuss matters with me in the presence of Smit, in order to definitely fix the necessary measures. Trichardt was away, and the meeting to which I had invited him could only take place on Friday evening, the 8th inst. He turned up at my office at 6 o'clock with Lieutenant Kroon, and informed me that everything had been arranged in the manner I had proposed. The field cornet would continually be at the station at Standerton, the commandant lived in the village and at Paardekop, also the field cornet with two burghers who were stationed there by our overseer, Von Pelzer Barensburg. I insisted that our people who were charged with the blowing up should be commandeered as burghers of the Republic. This would be done. Furthermore, I learned that Trichardt would also be able to arrange with me for the carrying of the burghers, and I learned some particulars with regard thereto, which, however, did not bring me any further. With regard to the number and place from where they could come the information was extraordinarily vague. We agreed on the following day at the station to fix something with regard to the entraining of the artillery, with regard to which I also knew nothing so far. It is plain that for want of information I could make almost nothing in the way of preparations for mobilisation. On the 2nd inst. I had a discussion on that subject with Kloek Schadd, Van der Poel, and van Hasselt. The latter especially advocated that the service should be prepared entirely for the carrying of troops, whereunder trains should as much as possible run with small speed and long delays at some of the stations in order to secure regularity as much as possible. I was somewhat frightened to introduce an entirely new service, and would rather continue the existing service, and add a few new ones in between. Fortunately the section shifts who had to carry out the service agreed with me, also especially because generally there was nothing known as to what would have to be carried, neither from where nor to where, nor the extent; however, we agreed upon some points, as to division of carriages and the provision of the staff, etc. By official letter to Smit on the 2nd September I, however, tried again to obtain for him the so highly necessary information as to mobilisation. So far in vain. This morning I still agreed upon certain things with Trichardt with reference to the entraining of the military, and I have more or less found out how many trains might be required. There are three batteries of eight pieces (field pieces and maxims), but two more may be formed. Every piece has six horses and men, four serving men, and, with a battery, one battery commandant, eight gunners, and three trumpeters. I shall therefore, in addition to the eight pieces, calculate on more or less 100 men and 100 horses. That will just go in one train. This is with regard to the line of fire, then there is still the fighting line, but I could obtain no correct information in respect of it. Kroon promised it to me, but up to the present I do not know it. I now expect that there are about 100 flat wagons required, and will try to have them here. Also there will be sufficient cattle trucks, but I had a few more added, as a large quantity of trucks are most likely to be required at Pretoria. I could also still provide for the making of a few cranes for the discharging of pieces in the open field, or at stations, without having to make the platforms higher. Furthermore, we have used the last weeks for making a great quantity of large and small loading bridges, drinking troughs for the horses, and temporarily enlarged entraining platforms at several stations. A few service orders with regard to the attitude which our staff should have to adopt on sections which might fall into the hands of the enemy were issued. In regard to these I first asked the sanction of Smit."

(*Dr. Lohman.*) Mr. Chairman, will you allow me to say a few words as Mr. Van Kretschmar's legal assistant in this case? I am his counsel, and before you start with the diary I wish to draw your attention to the fact that the diary does not belong to the company's documents, but is a private book kept by himself alone, and has nothing to do with the case.

(*Chairman.*) We think it has a good deal to do with it.

(*Dr. Lohman.*) Before you ask him any questions with regard to that diary I wish to state that it has nothing to do with the company, but was his private book.

(*Chairman.*) A note will be taken of your objection. (*To Witness.*) You say, "It has surprised me that the Transvaal Government up to the present paid so little attention to these preparations." When did you first begin to feel surprised? But here you give a date; you state that on the 21st July you wrote an official letter to General Joubert before the war began, and you had had an interview with him a few days later, from which it appears to you that General Joubert had absolutely no plan of defence. I notice also you say with reference to the proposal to oppose a special armour train that was ready to invade the country by letting a locomotive run against it, that it must be presumed that "the enemy" would take possession of the telegraph at each station which he would pass with the armour train. This was written in August before the war had begun, and according to your diary the English had become "the enemy"?—Yes, I wrote that.

551. This is a correct translation of your diary?—It is not quite exact, but it is substantially correct.

(*Dr. Lohman.*) I hope Mr. Kretschmar will have an opportunity of formally protesting against the reading of this diary.

(*Chairman.*) I understood that you had done so on his behalf.

(*Dr. Lohman.*) We come here quite unprepared, and did not know what was to be asked of us. According to the notice in the Government Gazette, we understood that evidence was to be called upon the doings of the company, but not those of a private person.

(*Chairman.*) I suppose you know as well as I do that

the company is not wholly unprotected by the action of its managing director, and if you find a record of a managing director as to what he has done, I do not think any lawyer would consider that it was not relative to this inquiry. The managing director is responsible to his company.

(*Dr. Lohman.*) You will excuse me from discussing the point here.

(*Chairman.*) I have merely mentioned it for your satisfaction, and we shall not further discuss it.

The following selection of extracts from translated letters contained in Mr. Van Kretschmar's letter-book were read by the Chairman, who directed them to be printed in the record of evidence:—

EXTRACTS.

Pretoria, 2nd February, 1900.

DEAR SIRS,—

* * * * * *

I also repeated my offer to take over entirely a portion of the line, for instance, up to Kroonstad. For the present it was not found necessary.

* * * * * *

Yours,
(Signed) J. VAN KRETSCHMAR.

Pretoria, 13th February, 1900.

DEAR MR. DU BUY,—Confirming my telegram of even date, I must inform you still that it is my intention to assist the Government of the Orange Free State as much as possible in the exploitation of the railways in the Cape Colony, and that we must therefore provide Mr. van Eelde, who they have charged with it, with a good set of men. Now, of course, they need not all come from your department, as soon as you can provide for it, it would be the best, as Kloek will then know who he gets with him. He will, in the first instance, have to see that he gets a good lot of useful men, to which other of inferior quality could be added. In any case, I request you that you will arrange with Kloek how to provide for his wants in the best way without losing sight of the interests of our own service.

The Management,
(Signed) J. VAN KRETSCHMAR.

Mail of 4th March, 1900.
Pretoria, 28th February, 1900.

DEAR SIRS,—

* * * * * * We have withdrawn our railway service at Modderspruit, and taken the rolling stock back to Glencoe. All cannons have also been brought over. All bridges and culverts between Modderspruit and Elandslaagte have been destroyed. Westenberg with his destruction staff forms the rearguard.

* * * * * *

News has just been received from Westenberg that all works to Glencoe have been thoroughly destroyed, and that all burghers are there except two commandos under Louis Botha and David Schoeman, who were still fighting. Whether these can escape the enemy appears doubtful to me.

* * * * * *

Yours,
(Signed) J. VAN KRETSCHMAR.

Mail of the 23rd March, 1900.
Pretoria, 17th March, 1900, Saturday.

DEAR SIRS,—

* * * * * *

The Orange Free State Government have taken good care that with the occupation of the English we should lose a considerable quantity of rolling stock. I cannot get exact returns, but there is also a locomotive with it. They have, in addition, taken care that the English got sufficient locomotives to the north of the Orange River, of which the bridges were blown up by the "Zasm" people under van Eelde. It is said fourteen were in good order, and that Hall, the locomotive superintendent, remained at Bloemfontein and immediately offered his service to the British Government.

Mail of 26th March, 1900.
Pretoria, 26th March, 1900.

DEAR SIRS,—

* * * * * *

To-night I go to Kroonstad to have a talk to Brounger with regard to our rolling stock which he strenuously keeps in his possession, and also to hear whether he does not require our assistance as to locomotives and men.

* * * * * *

Yours,
(Signed) J. VAN KRETSCHMAR.

Pretoria, 14th April, 1900.

DEAR MR. BROUNGER,—The absence of an answer to my letter of a fortnight ago is causing me some anxiety, and I am afraid that as time is pressing the position is not improving, so that I may at once be obliged to make the arrangements as suggested in your foregoing letter. The more I have been thinking of the matter the more I am convinced that I will not be able to assist your administration in an efficient way if things are going wrong. No doubt it will already be difficult to take over the working of a portion of your line now, but it will certainly hardly be possible if the commandoes are retiring and in a kind of déroute.

Of course, I should feel glad if you see your way to help yourself without my assistance. The proposal I made is by no means a pleasant job for me, but I am perfectly willing to carry it out if it is considered in the interest of the country *and I should be requested to do so by your Government;* only if the decision comes too late it will be a failure, and I shall have to consider whether my assistance would be of any good then. Almost two weeks have been lost now which might have been used to take over the service without disturbance, and it remains to be seen whether we shall still have such an opportunity.

I fail to see what keeps your decision back; the proposed arrangement is acceptable or not by itself, and this does not depend on circumstances, and as this unsettled state of affairs puts me into inconvenience with my people, for whose replacing I have to make many provisions, I am very anxious to know what I have to expect or to prepare for.

So please let me know as soon as possible what your Government has decided.

I understand there is some friction about the matter between the two States, but in this I am not concerned; only I should very much regret if this should prevent being done what is considered best, or if it should cause a delay which might prove fatal.

Personally I should be glad if you would do without me, as this would save me a lot of trouble, but I think that if you keep the responsibility for the service now, you will have to bear it till the end; in which case you still could always rely on my assistance if wanted. If such a decision is come to it will relieve me of troubling my mind with the bigger scheme.

I hope you will clearly understand my position, and soon favour me with an answer.

I remain, yours faithfully,
(Signed) J. VAN KRETSCHMAR.

Mail of 6th May. In reply to letters 10th, 20th, and 23rd March. Received 27th April, 1900.

Pretoria, 28th April, Saturday, 1900.

DEAR SIRS,—Your remarks with regard to the strict neutrality of the Netherlands South African Railway Company are not very refreshing to me, especially as they come now when the chances have turned against the Boers. If it should come to the worst and the English become masters here, I am afraid that we have hopelessly compromised ourselves in deed, word, and writing. We have made cannons and ammunition, we have sold material to the Republic, we have blown up bridges on English territory, and have not discharged our staff on commando. And we have assisted the Orange Free State with advice, and, indeed, with persons and material, and there are in existence letters, telegrams, and living witnesses that we have strongly supported the Government in its defence. I have everything covered as much as possible by orders, but I have never yet adopted the appearance that we object to the carrying out of them. On the contrary, there are proofs that we have been but too willing to do everything that is in the interests of the Republic. How could it be otherwise? We have always sounded it how we serve the interests of the State, how the Government could always reckon on us under difficult circumstances. Yes, how we almost were "plus royaliste que le roi." Everybody knows that and I can well understand that our Hollander gang is not beloved in London. We cannot be neutral and adopt the appearance that we had to be forced under protest to perform war service; but even that appearance would not have been accepted by anyone as the truth. As against the Republic

Mr. J. van Kretschmar.

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we would not be *bonâ fide* if we did not interpret Article 22 of the Concession in the manner that the Government could dispose of our railway and ourselves as if it were their property, and we their officials. It is entitled to expect from us not only that we should do our duty as faithful servants, but even that we should give them the disposal of our tact and judgement as something which in the words of Article 22 belongs to "which is required for the use thereof." It does not do under these circumstances to rely on our status as a Netherlands Company, or simply a financial undertaking. We have accepted the concession to do business, but the Government gave it to us because they trusted us, and was of opinion that the interests of the country would be best served by a railway in the hands of a private Netherlands Company. We have, therefore, the moral obligation on us to justify that trust under all circumstances. Imagine to yourself that we had interpreted the neutrality strictly, and that we had only acted on receipt of instructions, that we had made no preparations as to measures of which we foresaw the necessity, that we limited ourselves to administration and maintenance, would we not then have had the same condition which is now so much regretted in the Orange Free State? But in addition we cannot interpret our neutrality thus because we are people who cannot act against our feelings. We may act, and apparently object, but if our position must depend upon that, then we are truly in a sorry position. I cannot imagine that this can have any influence on the English judgment. We are a Netherlands Company to make money, but we have a Transvaal Railway. The former may be neutral, but not the second. In addition, is it so certain that England will become absolutely master here even if finally she wins the war? Surely on this subject there is even doubt in Europe? Suppose the Republics keep their independence wholly or partially, would then our company's interests not have been served better by our attitude during the war then by a pretended neutrality, which would clearly have shown the necessity of expropriation? I do not say anything as to the Netherlands national interest which we as Hollanders gladly serve, but which we are not called upon to do as a financial undertaking. I frankly admit that our position, in the event of an English victory, is precarious with regard to the carrying out of the concession conditions, expropriation, the payment of compensation, etc.; but even if we had during the war adopted a hostile attitude to the Republics, I cannot imagine that this would have made England more favourable towards us. In addition, our whole business is founded on debts guaranteed by the State, more or less equal to national debts, the holders of our bonds have a direct claim on the State. Suppose that it had been a State railway, then the State would have had to contract loans therefor. Would a conqueror now simply ignore State loans because with the proceeds it had exploited the railway during the war, or even because it had bought war material and ammunition for it? I believe that England will be wise enough not further to annoy the holders on the Continent by directly touching their pockets. Perhaps there may be some danger to the expropriation price of our shares under the concession, perhaps also with regard to the full payment of our other debts, although I consider the continental influence strong enough that even these will be discharged in full. Naturally we must keep ourselves from an active military part. Service Order 32 provides for this entirely, and relieves the direction of all responsibility for this. This is my idea of our position. I have already by asking for special orders, tried as much as possible to save the appearance of neutrality. According to the interpretation which you adopt in your last letter I have not always succeeded in this. We have, it is true, done things which we were not obliged to do according to the letter of the concession. For instance, I might have said, "Our workshop cannot make or repair cannons, we can shoe no horses, make no tents, no ammunition, etc. We have no one who can work with dynamite. We were not obliged to lend men to the Orange Free State Government. We are not going to pay our men on commando. We were not obliged to exploit railways outside of the State, and our neutrality prohibits us to enter into an agreement with you to that effect. I have no material for this or that commando. Our oil is finished, and now we cannot run," etc., etc. I would like to know how soon I would then have gone the way of the manager of the Pretoria-Pietersburg Line, who was immediately put over the border when he tried to maintain his neutrality. I would also then have liked to hear your judgment, you who were proud of it when you heard of the "Zasm" deeds of heroism in the destruction of bridges, etc., who wished for special data in order to make mention in our yearly report of the active part which we took in the defence of the country. The adversity of the Republics must have sorely touched you in order to make you all of a sudden so anxiously neutral. No, we are now once in the boat, and we must remain in it to the other bank. A railway under conditions as ours is exposed to such dangers and chances, and we must in a manly way meet them, and look them in the face. To save our life by playing "chameleon" every time that the prospects or positions change appears to me to be impossible. Had I to do that, then I should, when Roberts was before Pretoria and had the Southern, South-Eastern, and South-Western lines in his possession, humbly offer him to work those lines for him, or if I were locked up here, instruct the staff to do so. I have no intention to do this, and the staff must keep itself to Service Order 32. How everything will go I cannot say, but I suppose everything will be solved, and in a state of war one must not mind it so much if sometimes we have unpleasant moments, because one cannot prepare for all eventualities.

I hope that you will agree with the above.

* * * * * *

With the making of ammunition it will then be finished. Before our departure we should have to explode our workshop and empty our offices. Well, when the time comes we will see.

* * * * * *

Yours,

(Signed) J. VAN KRETSCHMAR.

552. With regard to this correspondence, it is a continuation of letters which you wrote weekly throughout the whole previous year?—Yes.

553. Your letters to him and his letters to you—that is, the originals, are now in Holland?—Those which I wrote to him are in my letter book here.

554. Have you his replies?—No, they would be in his letter book in Holland.

555. On the 15th February you wrote a letter addressed to Mr. de Buy on the subject of the exploitation of the railways in the Orange Free State and the Cape Colony, and on the 28th February you addressed a letter headed "Dear Sirs," giving information as to the progress of the war, and stating "all bridges and culverts between Modderspruit and Elandslaagte have been destroyed. Westenberg, with his destruction staff, forms the rearguard." To whom was that letter addressed?—To Mr. Middelburg, who is on the Board of Commissioners at present. He took my place, and he is now a Commissioner.

556. He is the most experienced man in connection with the concern?—Yes.

557. On the 28th April you wrote to the managing director in Holland in reply to his remarks concerning the strict neutrality of the Netherlands Railway Company, and you said that these remarks were not very refreshing to you, especially as they come now, as the chances have turned against the Boers?—I do not know exactly. They said our people were to withhold from engaging in active war as railway officials. I suppose they had some doubt as to the consequences after the war, and they wanted everything to be ordered by the Government.

558. Had you, prior to that time, received any expostulations with regard to the attitude you had taken?—So far as I remember, no.

559. You were writing these letters to Mr. Middelburg as to what you were doing?—Yes.

560. And you heard of no expostulations?—I myself felt a little angry at the attitude they were assuming in Holland with regard to the action I had taken.

561. You go on to say "If the English become masters here I am afraid we have hopelessly compromised ourselves in deed, word, and writing. We have made cannons and ammunition; we have sold material to the Republic; we have blown up bridges on English territory, and have not discharged our staff on commando, and we have assisted the Orange Free State with advice, and, indeed, with persons and material," etc. One passage I notice is to the following effect:—"You who were proud of it when you heard that the "Zasm" deeds of heroism in the destruction of bridges, etc." Was the pride experienced by your board, when they heard of these of heroism, conveyed to you in they heard of these deeds of heroism conveyed to you in an angry style.

562. Even if you were a little vexed you would not

have invented anything. You speak of a very specific thing here. You speak of a wish that the board of the Netherlands Company had that very special data should be sent by you for insertion in the yearly report, as to the active part which you had taken in the defence of the country?—Yes, I gave it. It is in the yearly report of the company. They asked for data as to what we had done outside of our regular business in the defence of the country.

563. Did they complain to you of the part you had taken?—No, it did not go so far as that. They did not know all the details. No doubt they saw something in the papers; they saw we had taken an active part; that we had done our duty, and they were glad of it. It seemed natural that they should express some pride, and they thought that we took up the right position.

564. They did not hear without some exhilaration about bridges flying in the air?—I do not know about bridges flying in the air, but we were obliged to do that as well as other things.

565. You also say, "The adversity of the Republics must have sorely touched you in order to make you all of a sudden so anxiously neutral. No, we are now once for all in the boat, and we must remain in it to the other bank." The translation of this letter is substantially correct?—Yes.

566. (*Chairman.*) I want to understand your position. Is it your contention and belief that all these proceedings were justified by Article 22?—Yes. I feel positive on that point.

567. I will put an illustration to you. Supposing Germany or France had gone to war with the Transvaal, would you have acted in a similar manner?—Yes, certainly.

568. (*Mr. Ashmore.*) Or Holland?—That would put me in a difficult position.

569. (*Chairman.*) Would you consider that an article in a commercial concession, such as Article 22, justified you in organising a force of men belonging to nations friendly to the English Government in an army arrayed against that Government?—Well, I did organise that force, but I think that the Government had a right to expect us to organise that force from the men in our employ.

569.* I will not argue about the words, but you had here a large force of something like three thousand and more men, and do you consider that this article in a commercial concession justifies you in combining with the Transvaal Government to organise that force to make war with a friendly power?—Yes. In everything that is connected with the railway. The railway in ordinary conditions is a commercial business but not in time of war.

570. Do you limit that contention to everything done within the scope of the company?—I consider that the Government by Article 22 of the concession had the same right over us as if it had been a State railway. We did what we thought a State railway should have done.

571. You consider that by Article 22 the State was entitled to the use of your railway and staff for all railway purposes?—That is correct.

572. Do you go further than that?—Yes. I consider that the article means that the Government may order all matters necessary for defence.

573. So that if I were a guard or an engine driver you consider that under Article 22 I could be transformed into a soldier and be compelled to go into the fighting lines?—Well, not as a soldier.

574. But perhaps in a more valuable capacity?—Yes. The staff could be employed for defences as regards their railway services. My contention is based simply on Article 22.

575. What material have you got to assist us in arriving at the amount of damage which has been done to the railways in Natal?—None whatever.

576 You cannot give us any information?—No, not even as to the damage done on our own railway. I have no particulars. Mr. Westenburg gave me some details as to the bridges and culverts that had been destroyed, but they are not complete, and you will not find anything of the actual damage that was done.

577. Even if you do not have an accurate account of the number of bridges, etc., blown up, the rails destroyed, and other destructive operations, can you not give me some estimate of the costs of replacing them?—A great many of the bridges were not blown up by us; we found bridges blown up before we came there. The only big bridge destroyed by us was the Tugela Bridge.

578. Will you before to-morrow give us information from the memorandum you have as to the places at which damage has been done?—I shall only be able to give you information as to the big bridges, not with regard to culverts, water tanks, and other smaller works. Everything was destroyed on the retreat, and I cannot really say what we destroyed, and what was destroyed by other people.

579. It is advisable from the point of view of your company that that information should be supplied?—I am afraid I shall not be able to give it. There are people who could give it, but the evidence is gone to Holland.

(*Mr. Van Hulstein.*) I have the papers belonging to Westenburg and Schoof, weekly reports as to what damage they did and how it was done, and even the plans for the destruction of the bridges.

(*Witness.*) It would be difficult to give a cost of the bridges. I have no engineers here, and we have no drawings of the Natal line. I am willing to do all that I can.

580. (*Chairman.*) We shall be glad to get all information that you can give us. Were reports made to you as to the loss of life caused by any of these operations?—Do you mean in battle?

581. No, in connection with blowing up bridges or culverts?—There was no loss of life. I have never had reports made to me of lives lost in the blowing up of bridges or culverts.

582. Do you know a gentleman by the name of Hargrove?—Yes.

583. Did you know him personally?—Well, he came to me in Pretoria.

584. What was his business with you?—He was sent to me by Mr. Reitz, State Secretary, privately. Mr. Reitz advised a subscription for his business.

585. Did he come to you with a letter of introduction?—No; he said he came from Mr. Reitz.

586. Did he tell you what his business was?—Yes.

587. What did you say?—He said he was very much in favour of peace, and he thought this war was an injustice. He wanted to know what the people here wish, and what the Government wish, and they had told him perfectly clearly that they did not want any extension of territory; they only wanted their independence. He had told me that he asked Mr. Steyn and Mr. Kruger what they desired, if they wished to obtain possession of Kimberley or any portion of Natal, and he was desirous of giving an assurance to the people of England and the Cape Colony that it was wrong to go on with this war.

588. What date was this?—It was about February. There was a letter from Mr. Reitz.

589. He told you he thought he could persuade the English people that it would be wrong to continue the war?—Yes.

590. Did he say that he was going over as a lecturer in order to try and stop the war?—Yes. He intended to exercise whatever influence he could with that object.

591. Did he ask you for money to carry out his object?—Yes, he said he had travelling expenses to defray, a lot of publications to issue, and books had to be written, and he asked money for these purposes.

592. It strikes one as being a singular request to make to a railway company?—Well, I was interested in peace, and I thought that if we could get peace restored it would be all right. I asked him what was the opinion of Mr. Reitz about it, and he told me Mr. Reitz would be happy if I could assist him with money.

The following letters were read:—

(Confidential.)

Pretoria, 3rd February, 1900.

Highly esteemed Mr. Reitz,

I hereby at your request enclose copy of the letter you this morning placed in my hands. I am anxious herewith again to affirm that I merely wanted this document as a testification of my Company as against the Government, which to so great an extent is concerned with the results of our business.

For the rest I consider myself from a business point of view quite justified in giving financial support to the

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work of Mr. Hargrove, for if his efforts are crowned with success, each day the sooner that peace comes, will amply indemnify as for what we now furnish to him.

Respectfully, yours, etc.,
(Signed) J. VAN KRETSCHMAR.

Government Offices, Pretoria,
3rd February, 1900.

Mr. V. Kretschmar,
Director Z.A.S.M.

Sir,—I hereby commend to the willingness to help of your Company, the object for which Mr. Hargrove strives. It being know to me that his Excellency the State President approves of his intentions, but does not wish to concern himself therewith direct.

I can in the meanwhile also give you the assurance that the Government will be pleased if your Company will also give him financial support.

I have the honour to be,
Your obedient servant,
(Signed) F. W. REITZ.

On the 3rd February, 1900, the N.Z.A.S.M. paid Mr. Hargrove the sum of £1,000, which is debited to the account "Political Situation," to be hereafter arranged with the Government.

(Signed) J. VAN KRETSCHMAR.

593. This gentleman with his benevolent intentions comes to your railway company, and asks you for the expenses of his tour, and the State says it would be desirable in this case to give him money?—I did not see anything against it. I had confidence in it.

594. What amount did you give him?—I gave him a thousand pounds.

595. Did Mr. Reitz or Mr. Kruger explain why they themselves did not give him money?—Hargrove explained to me that they did not want an idea spread abroad in the Cape Colony or England that State money was being used for any such purposes.

596. Did he give you any promise to indemnify you for this money?—None whatever.

597. You did not do it as agent for Mr. Reitz or Mr. Kruger, but independently?—Yes.

598. How was it entered in your account?—It was in our books. I put it in that account in connection with political circumstances. It would be accounted for as working expenses. It is in the books as being paid to Mr. Hargrove. There was no concealment about it at all.

599. It actually appears in the books under that heading of political circumstances and working expenses?—That is the heading I put it under.

600. It is not a bad heading at all. How much altogether do you think was paid in connection with political circumstances?—A copy of the whole account has been handed to Mr. van Hulstein, but this is the only thing which has a political meaning. All the other items are expenses for material, changing coal trucks into cattle trucks, and so. It was considered necessary outlay in consequence of the war, and the Government would have been responsible for it.

600*. You are quite confident there is no other "working expense" of this particular kind?—Yes.

601. (*Mr. van Hulstein.*) With regard to the question of this thousand pounds paid to Mr. Hargrove, the explanation given to me is that the Government was entitled to 85 per cent. of the surplus profits of the Company, and it made no difference what the Government expended.

(*Witness.*) I recognise the control of the Government in regard to expenditure of this kind, and I wished to have their approval. The Government has to get the plans submitted at the end of the year, and if such an item was found entered without their sanction some objection might have been raised.

601*. (*Chairman.*) May I take it that you did recognise the control of the Government to make expenditure of this kind. If the Government had asked to make expenditure for any purpose, provided you got their instructions in writing, you would have done it?—Yes. I thought it was necessary in this case to have authority. We have done it more than once; there was also that other case with the "Standard and Diggers' News."

602. Did you make another payment at the request of the Government in February, 1900, to the proprietors of the "Standard and Diggers' News"?—No.

603. Did you make a loan to them?—Yes, it was long ago, in 1897 or 1898, I do not remember exactly. There is a letter here from Mr. Mendelssohn to Mr. Steinmetz.

Mendelssohn and Bruce, Limited. P.O. Box, 94.
February 9, 1900.

Th. Steinmetz, Esq.,
Secretary Neth. Railway Coy.,
Pretoria.

Dear Sir,—I am in receipt of your letter of February 7, advising me of the return of a draft of £5,150 at my London office to Amsterdam. As there are no funds in London my representative was utterly unable to pay it. I know the amount was due in December last, kindly extended by you from June last; but with this war and the impossibility now to realise any of my assets, your directors will see, I hope, that it is impossible for me to pay the amount until after the war is over, when the disposal of some of my assets will enable me to pay you. Meanwhile I shall pay the interest due, and now beg to hand you my cheque for £150 for interest due to December 31st 1899. Kindly advise your Amsterdam directors of this, as it is impossible for my London office to deal with this matter in any way, my paper there being closed and no revenue coming in. I sincerely trust that my present proposal will meet with your approval. As soon as I am able I will endeavour to reduce portion of my debt, even while the war continues. Thanking you in anticipation,

I remain,
Yours faithfully,
(Signed) E. MENDELSSOHN.

This loan was effected at the instance of the Government of the S.A.R.

Pretoria, 5th August, 1900.
(Signed) J. VAN KRETSCHMAR.

603.* This appears to be a loan of £5,150 effected by your company to the "Standard and Diggers News"?—It was only for £5,000, the £150 was for interest.

604. How came you to lend that money?—I do not know. It was also done at the request of the Government. It was done in Holland, Mr. Mendelssohn was in Holland, and wanted the money to extend his printing business in Johannesburg.

605. You have no doubt it was lent by your company?—Oh, no; I have got the security here, and I have no doubt that it was also lent at the instance of the Government.

606. (*Mr. Ashmore.*) Was it a trading account, or was it entered as being lent in connection with political circumstances or working expenses?—Certainly not, this is an asset.

607. (*Chairman.*) What was the security he gave?—£600 in shares in Mendelssohn and Bruce's Company.

607*. What interest did he pay?—Six per cent., which he regularly paid, but I do not think he has paid the last instalment.

608. There is also another case, that of Mr. Statham. Was the loan made to him in your time, since you have been Managing Director?—No, it was not a loan. There is a letter referring to it, dated 7th April, 1899.

[Confidential.]

G.R., 336/1899.
Government Offices,
Pretoria.
7 April, 1899.

Hond. Sir,—With reference to a letter of H.E. the Ambassador, dated 23 March last, with reference to Mr. Statham and the latter's request for an assistance of £300 for furniture and such like, I have the honour to inform you confidentially that the Executive Council has resolved to grant this gentleman Statham an amount of £150.

As according to previous agreement, a yearly allowance is paid to Mr. Statham by your company, I have the honour to request you kindly to pay out to the said Mr. Statham the sum granted him.

His Excellency the Ambassador is likewise being informed of this decision of the Executive Council.

I have the honor to be, etc.
J. W. REITZ.
State Secretary.

I van. Kretschmar v. Veen Esq.
Director of the Netherlands S.A. Ry Co., Pretoria.

609. Was Mr. Statham a lecturer too?—He is a writer of books, and he published a book entitled "Paul Kruger and his times."

609*. A writer not altogether hostile to the South African Republic, I presume?—No, I believe not.

610. (*Mr. Ashmore.*) Did he get an annual salary?—Yes, so it seems, but I cannot give any particulars. It was before my time.

610*. (*Chairman.*) No doubt this annual salary was paid through your company?—No, I cannot say.

611. Did you expect this to be repaid by the Government?—I do not believe it has been put into the Government account, but I cannot give positive evidence. The money was paid by us.

612. It seems a curious thing that you should pay your shareholders' money away to newspaper writers?—We considered that the interests of the Republic were our interests. We only did when it was necessary.

612*. And it was necessary when the Government wanted it? That was the necessity?—Yes.

613. You thought it advisable to be on good terms with the Government on any moderate terms—that was your motto?—I suppose so. We did not pay much.

614. There were other rather more important people connected with the Government to whom you made payments. How many payments were made to Mr. Smit, Railway Commissioner, in your time?—In my time he got £300, but that was only an advance, and he regularly paid it back.

615. Did he give you any security?—No.

615*. How did that come before you?—It was by his personal request. He had his sons in Holland for their education, and he sometimes asked our company to pay out £100 on their account, which he paid back here.

616. How long had that been going on?—For some years; but he regularly paid it back. It is only lately that the sum has been increased to about £400. He asked us to pay £200 when the war come on; but he was not in a position to refund it.

616*. And he paid no interest?—No.

617. You continued these payments to him because it had been the practice of your office to make such advances?—Yes.

618. And he was Railway Commissioner at the time?—Yes.

619. The letters which you wrote to Mr. Middelberg and Mr. Van der Wall Bake, your colleagues, were continued weekly?—Yes, they were very constant; when the ordinary mail service was in existence we wrote weekly.

620. What is the method of communication between the Managing Director in Holland and the Board of Commissioners?—They wrote letters sometimes, but they generally communicated at their meetings. There was no regular correspondence, but on occasions of importance the Managing Director wrote a letter to the Chairman, and it was usually deemed advisable to call a meeting.

621. You would not for a moment suggest as against your colleague, the Managing Director in Holland, that he would keep his board in ignorance concerning such matters of importance as you were writing about?—Certainly not, he would pass my letters on.

622. And they would hold meetings, minutes of which would be kept?—Yes.

623. Did the Board of Commissioners ever communicate direct with you?—Here? No, never.

624. Your letters are addressed "Dear Sirs"?—Yes. Although the letters might have been addressed to Mr. Middelberg I knew that they would also be seen by Mr. Van der Wall Bake.

(*Dr. Lohman.*) You would remember that before being examined Mr. Kretschmar handed in a statement. I should be very much obliged if you would let us know whether he is giving evidence on the contents of that statement.

(*Chairman.*) Mr. Kretschmar gives his evidence here because we as Commissioners are appointed to inquire into this Concession, and because we have a right under the proclamation of Lord Roberts to call witnesses and to take their evidence upon oath, also to obtain all documents material to inquiry.

(*Dr. Lohman.*) Thank you. We want to know whether he is giving evidence on the understanding set forth in his statement.

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(*Chairman.*) We have no understanding with the witness, and have nothing to do with any reservation which he may make. He is under an obligation to attend here and answer our questions.

(*Dr. Lohman.*) We understood that we came here of our own free will.

(*Chairman.*) Have you seen this document (Lord Roberts' proclamation)?

(*Dr. Lohman.*) I do not know what it is.

The Secretary read the proclamation as follows:—

Whereas a Commission has been appointed by Her Majesty's Government to enquire into and report upon certain concessions granted by the late Government of the South African Republic, and the Commissioners commence the said Enquiry at Pretoria on 10th October, 1900.

Now, therefore, notice is hereby given that all persons summoned by the said Commissioners to give evidence must attend and give evidence on oath before the said Commissioners, and produce all documents and books which the said Commissioners require them to produce, and which are in their possession, custody, or control.

Any person failing to obey the said summons will be dealt with under martial law.

God save the Queen.

Given under my hand and seal, at Pretoria, on this the tenth day of October, one thousand nine hundred.

ROBERTS,
Field-Marshal,
Commanding-in-Chief, South Africa.

(*Dr. Lohman.*) That was a proclamation issued yesterday.

(*Witness.*) I have not seen it.

(*Mr. Lance.*) I desire to appear here on behalf of the Johannesburg Chamber of Commerce in the same way as the Chamber of Mines and the Municipality of Johannesburg are represented. In connection with this request I would like to ask the Commission whether it is not possible for them to hold meetings in Johannesburg? The Chamber of Commerce has not been in the same position as the Chamber of Mines in being enabled to be prepared for this Commission. Its members are scattered all over the country instead of being in one place, and it was not until yesterday that they were able to hold a duly qualified executive meeting. I received very hurried instructions last evening, and ask you to be good enough to allow me to appear and represent them here. The commercial people of Johannesburg are very much interested not only in such concessions as the Netherlands Railway and dynamite companies, but other large concessions affecting everybody, and more particularly trading and factory concessions. They would like to be heard by means of witnesses, more particularly on the fourth point mentioned by you as to the way in which these different concessions affect the public interests. I would ask you first of all for leave to appear on behalf of the Chamber of Commerce, and, secondly, whether it is not possible for the Commission to sit in Johannesburg and afford an opportunity of meeting evidence there regarding the various concessions.

(*Chairman.*) We think the Chamber of Commerce are a body of quite sufficient importance to warrant their being represented, and we shall be happy to allow them to appear by you in this investigation. We had hoped very much to have had some sittings in Johannesburg, and, speaking for myself, it is a great disappointment that we find it difficult to hold sittings there. But the difficulty in moving about the country a great number of papers, what is virtually a large office, is so great that we very much fear that we shall be unable to go to Johannesburg. It is our duty to consult the greatest convenience of the greatest number, and we think that that will be best done by the gentlemen of Johannesburg coming here instead of this Commission going to Johannesburg under existing circumstances. We cannot hold out much hope of sitting there, but we trust that gentlemen interested, such as the members of the Chamber of Commerce, if they have specific facts to represent, will come here, every reasonable notice of the order in which the cases will be heard having been given in the first instance.

(*Mr. Lance.*) May I express the hope that the inquiry into the Netherlands Railway Concession will not be closed to-day.

Mr. J. van Kretschmar.

11 Oct. 1900.

(*Chairman.*) It will not.

Dr. Lohman asked the Commission if they were aware of the correspondence between Lord Roberts and Mr. Kretschmar.

(*Chairman.*) For whom are you speaking?

(*Dr. Lohman.*) I am speaking on behalf of the railway company. I am only asking if you know of the instructions given to Mr. Kretschmar by the authorities with regard to the steps to be taken?

(*Chairman.*) I think I know what you refer to. There is an intimation given to Mr. Kretschmar that he may attend here and will be fully heard upon the subject of the concession.

(*Dr. Lohman.*) No, Sir. I referred to instructions given to Mr. Kretschmar on the 4th September last, which state that any communications should be addressed by the director of the company in Amsterdam to Her Majesty's Government. That has been done, and at present the case is practically out of our hands. We do not know what is going on in Europe.

(*Chairman.*) I daresay not. It is not at all the object of this inquiry to find out what is going on in Europe, but what has been going on here, and the only witness capable of giving evidence is Mr. Kretschmar.

(*Dr. Lohman.*) He has written a great number of documents, and it is only fair before sending them in that he should have an ample opportunity of explaining any statement.

(*Chairman.*) That opportunity is afforded him now. When your turn comes you can ask any questions you can think fit or obtain any explanations you are capable of getting. It appears to us that what is happening in Europe has absolutely no relation to this matter at all. It may have hereafter, in the opinion of our Government. What we have to ascertain the best way we can is what has happened here. We have certain witnesses here, and we intend to examine them.

(*Dr. Lohman.*) This will only create a lot of confusion.

(*Chairman.*) We cannot listen to that. This Commission has ample power of inquiry. No reasonable man will say that the author of those letters is not in a position to give information relative to this inquiry, and to say that it produces confusion is a remark which ought not to be made.

625. (*To Witness.*) What has happened to the letters you received from your Board in Europe?—All the official letters are in the office. The private letters I have torn up.

626. What do you call a private letter?—This book (*produced*) contains private letters, which are the private property of the person who writes them or who receives them.

627. What is your idea of a private letter? Is a letter from one railway manager to another detailing matters of railway administration a private letter?—I consider this book deals entirely with private matters.

628. Some people would call private letters those which dealt with literature, domestic matters, and so forth, but I do not find anything of that sort in these letters. The bulk of them deal with railway matters. I presume they were not written for amusement, but to inform the recipient of what was going on. Now, unless it was done for amusement, what were they written for? Was it not for business? Surely it is not private, but official correspondence. You are a busy man, and a very able man, and you did not sit at your desk and write long letters to your fellow general managers unless you had a purpose in so doing. These letters refer to the railway, do they not?—Yes.

629. What is the difference in business between what you call a private letter and an official letter?—I have no obligation to act according to these letters at all, and I was quite free to change my mind.

630. That is your idea of a private letter?—These letters simply convey ideas which may be changed the next moment.

631. But your ideas were not speculations or conjectures of the future; they were details of the past, and your record of them is very valuable?—There are no lies in that book at all. I did not write untruths, but opinions and views which may be changed. They were written without much thinking about them.

632. As far as the facts went they were placed in these letters for the information of the person receiving them?—Yes.

633. And, of course, they were records of what you believed to have occurred?—Yes.

634. (*Mr. Ashmore.*) Although torn up you are aware that a copy of them was kept in Amsterdam?—Every man takes these letters home. I was not obliged to keep them and I only did so for my own use. Mr. Middelburg left some; he was quite free to take them all.

635. Until the unfortunate occasion of the British coming to Pretoria you had kept these letters? It was only then that you tore them up?—Yes, I tore them up because I did not want them to fall into the hands of the British Government.

636. (*Chairman.*) With reference to your letter of 17th January to Mr. Van der Wall Bake, did you warn him against supporting the idea of a united Republic in South Africa? Did you not write to the effect that it would be much better for the Boers to be content with an extension of territory in Northern Natal, Cape Colony, Amatongaland, and Kimberley, and that Delagoa Bay should be a free port guaranteed by international treaty, and did you recognise in that letter that the Hollanders had not quite the comfortable place in the affections of the Boers which they deserved?—I believe I wrote something to that effect.

637. In a letter of the 18th December, 1899, did you express a doubt whether the idea of your Board of separating South Africa from England would be accomplished as the result of the war?—Yes.

638. In a letter of 28th February you say: "What will it be when they (the English) have subdued these little republics? That they will continue to make the world uninhabitable for everybody who is not English is my only hope, so that they will one day be terribly humiliated, and then we may perhaps get a chance once more to assist in this"?—Yes, it was a private letter.

639. Then in a letter of 6th April, 1900, you write: "What I most regret in the whole business is that you are so much affected by it. . . . You who so calmly remark that in all wars there comes a moment of depression ought not to set the example of hanging your head at the first check. Don't think too much of the Boers; think of the Z.A.S.M. When their fight is fought out ours begins, and we shall want all our energy for it; yours in the first place. We shall have to fight for our staff, our share and debenture holders, and our contractors"?—Yes, I wrote that. It was private.

640. On the 7th May you write: "It is a perfect scandal to give up the struggle for independence in this way, while their resources are not only not yet exhausted, but have actually suffered comparatively little. . . . I shall try to convince myself and others that nothing is yet lost, and that the luck may turn . . . . but every day the facts put my hopes to shame. . . . The most miserable period of our existence is beginning, and the prospect that our whole rôle will speedily belong to history becomes daily more certain. All that we have done here will be lost. A great illusion the less for us—for Holland—for the Dutch race—not even the satisfaction of knowing that the vanquished will think of us with gratitude or that we have accomplished anything for their future.

"For the hatred against the Hollanders is greater than ever, and we shall remain the scapegoats in the eyes of English and Afrikanders alike. All that remains for us now is to rescue for the share and debenture holders and for our staff what there is to rescue. Perhaps Germany will lend us a hand therein, though if England makes a question of it not too much reliance must be placed on that."

You wrote on the 22nd May: "It is all over; the burghers won't fight any longer. . . It is a strange ending, and a final one. Especially for us Hollanders, for the Boers won't be much affected by the overthrow, but we shall go. Gone are the dreams of a Greater Holland for ever. We have mistaken the character of our kindred who are tired of us. . . . We are too good for them. There is an end for us to all our illusions about South Africa, and we must now concern ourselves with the purely material interests of the Z.A.S.M. and its staff. But we must first calmly await whatever Chamberlain and Milner may decree concerning us." And on the 3rd July you write: "As far as matters can now be seen we, as the Z.A.S.M., are going irretrievably bankrupt. We receive nothing more, and cannot again get to work so long as the Republic is not wholly subdued. We are bound by our Concession, and cannot again get the control of our lines so long as the Government does not give them back. We cannot ask the English Government for any compensation for the use of our line and

rolling stock; we cannot even discuss anything with the English Government or ask them what plans regarding us they have for the future. We can thus do nothing but wait for what shall be decided about us" ?—All these were private letters.

641. And you also expressed the belief that the attitude of the Cape Afrikanders was too slack?—Yes, but that has nothing to do with the railway, that is one of the things which shows that these letters were quite private.

642-3. Coming to a more practical question, you discuss the proposition of a German-Dutch-Transvaal Combination to fight the English shipping ring?—Yes, but that is nothing to do with the railway.

644. (*Mr. Ashmore.*) By the 31st Section of the Concession the capital account of the company is limited to an expenditure of £9,600 per mile. What is the total milage?—717. A separate concession was given for the Klerksdorp Line, which is about 100 miles in extent.

645. Please explain the Rothschild loan?—Two million sterling was borrowed from the Rothschilds to continue the building of the line on the eastern section. It was obtained through the Government, who had two million two hundred thousand pounds, and they gave us two millions, the balance may have been promotion money, discount, etc.

646. You recently raised money to pay off that amount? —Yes, in 1899.

647. Did you pay that money over to the Government of the South African Republic?—Yes.

648. And you conceived yourselves to be free with regard to the Rothschilds?—Yes.

649. What became of that money?—Rothschild has not been paid off.

650. You did not pay back the sum of money you borrowed through the Government. You say you have raised two million two hundred thousand pounds?—That was a new loan. That loan was issued below par. We had to refund two millions, and it could not be placed at par. It was placed at 97, and then it was taken over by the syndicate, who placed the loan, so that we did not get much more than the two millions we had lent to the Government.

651. And the two hundred thousand pounds was included in that loan?—I suppose so, I do not know. The account was approved of by the Government Commissioner.

652. That, I think, is not at all unlikely. Certain rates were stipulated for in your concession. Have you adhered to these rates?—Yes, unless we got permission from the Government to raise them.

653. As a matter of fact was there not a considerable increase in the rates?—I do not think so.

654. How did your rates compare with those of the Cape Government Railways and the Natal and Orange River Colony Railways?—In some cases they were higher, and in other cases lower.

655. In many cases they were higher, were they not? —It depends so much on the different tariffs, which would have to be examined in order to form an opinion.

655. Would it be impossible to prepare a statement showing that?—Yes. I have no staff at present.

657. (*Mr. Loveday.*) According to your statement no director can in any way be connected with the Company's contract, which is very right. But how about the Commissioners? Is there any provision whereby they shall not be so connected?—Yes, there is.

658. It appears to me in connection with the loans or advances made to the Company that some of the Commissioners were associated with the granting of the loans. Do you recollect when this Rothschild loan was effected? —It was in 1891 or 1892. Three bankers are on the Board of Commissioners, so that it may be that they were interested in our loans. Labouchere, Oyens and Co. lent money to the Company in 1891. They made an advance of about £600,000. I know the names of Wertheim and Gumberts, and Max Winter.

659. As regards your reserve fund it is not quite clear to me how you work it out. According to the Concession you have to write off 10 per cent. of the gross returns, and there is a provision made that if this reserve fund should amount to £560 per mile you can then use this money for the reduction of the various loans. Now the reserve fund seems to have got into debt, and you borrowed a million of money. This seems to be a very strange proceeding that a reserve fund can get into debt, and raise a loan on its own account?—The reserve fund could not keep pace with the extensions we had to make during 1896 and 1897, so we had to borrow money for extensions and to increase our rolling stock, and charge the Reserve Fund with it.

660. Does the Reserve Fund bear the interest on that loan and redemption?—With the 10 per cent. going into the Reserve Fund we are able to redeem a portion of the loan.

661. But this loan is specially raised for the purpose of covering the debit balance of the reserve fund?—We had to make extensions. If we did not do that we should have had to have raised new capital, and the reserve fund would not have been able to pay its debt.

662. A layman always understands by a reserve fund money set aside to meet certain losses, etc.?—It was not for losses, but for extensions and other outlays.

663. Was it ever contemplated that the reserve fund should pay for all the rolling stock?—The construction account was closed after a certain date, and then this money was for extensions. From the date of closing the construction account every extension was brought to the charge of the reserve fund.

664. The construction account was closed when you had not sufficient rolling stock?—I can only say that we raised a loan for the reserve fund.

665. But you might have used some of the profits. I suppose that by not using the profits of the company and creating this reserve fund you placed the shareholders in a much better position in the event of expropriation. Expropriation would take place on the profits, on the average dividend for the last three years, and I suppose it was just as well to divide as much of the profits as possible, and thus improve the position of the shareholders?—I cannot give any explanation of the facts or of the reasons why they did it. The financial administration of the company is entirely in Holland. I only know that it is done.

666. (*Chairman.*) In your balance-sheet for 1899 you have costs of direction in Holland £15,000 and in South Africa £13,000. Then you have salaries and bonuses £13,000 again. Would the officers get this?—These are salaries in the head office.

666*. Why is it not stated so, because you follow on again with another £42,000?——

667. (*Mr. Loveday.*) It would appear as if this £13,000 belonged only to the costs of direction in South Africa?—I cannot understand it, and I do not know that it is so, but it may be.

668. Then you wind up with £34,000, being an amount paid out under Service Order No. 33 for salaries of officials at the front. Then there is another amount, according to this report for 1899, the profit made and divided amongst directors and the *personnel* of the company, to the extent of £38,336. All that the two directors would get is £12,717, and the Commissioners a similar amount?—Yes.

669. Then if you were to take the whole of these sums that appear here for the direction in South Africa and the Netherlands together with the salaries and bonuses and the amount of £25,434 received by the directors and commissioners out of the £38,336, you have a total of £67,532?—Yes.

670. That is the real cost of direction?—There are also the clerks and engineers, but I cannot give you the details, although I may be able to do so afterwards.

670*. Then you cannot give us any information as regards the first balance-sheet of the company?—No, perhaps if you ask me a question I may be able to answer it.

671. For instance, in the first balance-sheet, which was up to the 31st December, 1888, there is an amount stated as having been spent on construction, viz., £124,000, and yet the first spade was only put into the ground on 1st November, 1889?—I think I can account for that. A lot of things were sent out on order and paid for, and people were also sent out. They were constructing bridges and material was bought.

672. I think you are wrong there. According to your own report, earthworks and actual construction only commenced 1st November, 1889, and this amount had been expended on 31st December, 1888? —It was on construction account, not on construction. The sum you have mentioned may have been for things ordered. I can only guess at it.

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673. Does it not seem peculiar that £124,000 should have been expended twelve months before the actual construction commenced?—I cannot say.

674. (*Mr. Van Hulsteyn.*) Is this compilation of all the affairs relating to the company full and correct?—It is not very complete, I hand it in formally. It pretty well shows what contracts the company is possessed of.

(*Reports for* 1897 *and* 1898 *handed in, as well as the report of the company for* 1899.)

675. Now with regard to your several debenture issues, they have been issued at different prices, and roughly they amount altogether to something like seven millions?—It is shown in the report for 1899.

676. Can you give the Commissioners an idea as to the price at which these different loans were raised?—Yes, they were all raised between 90 and 100 per cent.

677. Can you not get a bit nearer to it, have you not the prospectuses of the various loans?—[Witness promised to produce these prospectuses on the following day.]

678. Can you speak from memory as to the prices at which these loans have been raised?—No, I cannot give you full information, which is only obtainable in Europe at the head office.

679. On the 23rd September, 1899, you wrote as follows to the Government Railway Commissioner, impressing upon him the necessity for the Government to act under Article 22?—Yes.

680. You also had written to the Railway Commissioner on another occasion to the same effect. Now, supposing you had not written these letters, what do you think the Government would have done then?—They would have done just the same, but I wanted some security.

681. On the 20th December, 1899, you again wrote to Mr. Smit a letter in which you say that your opinion is that the railway company has done no more than could have been expected from it under Article 22?—I do not believe I said that.

682. Well, then, you believed you had done far more than belonged to railway business?—Yes.

683. Why did you write that?—Because I was responsible for what was ordered and wished to be secured in execution of the orders I had given.

684. So you intimated in that letter that you were doing more than could be expected from a railway company?—I say we are charged with things which do not belong to the business of a railway. That is the position we were placed in.

685. You considered you had to do all these things under Article 22. Were you also bound under Article 22 to do financing for the Government?—No, but we were not prohibited.

686. You did that quite voluntarily?—Yes. I assisted the Government, as I would have assisted anybody else.

687. Was the Government doing any business in Delagoa Bay?—Yes, they bought things there, such as foodstuffs.

688. And did you volunteer to finance the Government so far as Delagoa Bay business was concerned?—Yes, certainly.

689. Now, in a letter of the 2nd March, 1900, addressed to the Commandant General, you ask for a special order to cover your company in making ammunition. Previous to your getting that order, had you not been making ammunition?—We had several orders.

690. Had you been making ammunition previous to this date, 2nd March, 1900?—Oh, yes; certainly.

691. So that for a long time you had been making ammunition without an order?—I do not think that. The letter asks the Commandant General for an order for ammunition. It is for a special case for which no order had been obtained. I asked that only for ammunition ordered by the dynamite factory. It was for a general authority to consider orders from the dynamite factory as binding on the Government.

692. Had you not been making any ammunition for the Dynamite Company before this?—Yes.

693. Therefore, previous to this date you had no specific instructions?—I cannot attach an order from the Dynamite Company to an order from the Government. They had an order at the workshop, but I did not think that sufficient, therefore I asked to be supplied with an order from the Government. Previous to this date I had been simply acting upon instructions contained in an order of the Dynamite Company.

694. You had been manufacturing simply on instructions from the dynamite factory?—You can take it that the Government knew everything about it.

695. Under whose instructions were you really acting?—Under the Commandant General. It was a verbal instruction, and I considered I was quite authorised to do it, only I wanted to be covered by that order, so that, if the dynamite factory did not pay, I could have recourse to the Government.

696. Up to that time the dynamite factory was to pay you for making the ammunition, and you were working for the Dynamite Company?—Yes.

697. Had you instructions from the Government direct? Yes, verbally.

698. When did you get these instructions?—I do not know.

699. Who gave them to you?—Mr. de Souza, secretary to the Commandant General.

700. He acted for the General, and you did not inquire whether he was authorised or not?—(*No answer.*)

701. If you were manufacturing for the dynamite factory, what had that to do with the Government?—I wanted to be covered, so that if the Dynamite Company did not pay I would put it to the account of the Government, which I did.

702. Now, with regard to the Orange Free State Railways, did your company exploit these lines? Did you do any work there?—The only thing we intended to do was to repair a bridge by order of the Government. Previous to the war the Free State Railways were short of enginemen, and we sent up thirty.

703. (*Chairman.*) In contemplation of war?—The people had left in contemplation of the war.

704. How do you account for your letter of the 26th April, 1900, in which you inform the Railway Commissioner that you are having such great trouble to get the line repaired in the Orange Free State, that it will require 50 men and Kaffirs, and you want them to help you? You gave a portion of your staff to repair that line?—No, this was a special bridge, which had to be repaired by order of the Transvaal Government, and the Transvaal Government gave an order for it. We should have done this work if we had got the men.

705. You suggested that your company should work the Free State lines?—I was sent by the Transvaal Government to speak about this matter to President Kruger, but nothing was done. I would have been quite prepared to do it.

706. In connection with the destruction of bridges, etc., you formed a special destruction staff? Under whose charge?—Mr. Westenberg.

707. What was he?—He was assistant chief engineer.

708. He started some time previous to the war?—Yes, he started inspecting the line.

709. He commenced to find out which were the best bridges to be blown up, and the best way in which it could be done?—Yes.

710. When the war commenced he was placed in charge of that particular staff, and he had with him two gentlemen named Schoof and Schwemmer?—Yes, and there were several others.

711. Mr. Westenberg investigated these matters before the war began, and these instructions were to men engaged in the business afterwards?—Yes.

712. And reports were made to you by Westenberg and his men?—Yes, some of the reports were sent in weekly, and are for men in charge of the different parts of the line. (*Reports put in, and identified by witness.*)

713. Did your company do any damage in the Orange River Colony in blowing up bridges?—I do not think so, I think they only repaired bridges. (*Witness shown documents referring to the damage done by the company in the Orange River Colony.*)

714. (*Chairman.*) These documents, as you will see, are communications between the men who did this damage, employees of the Netherlands Railway Company. As a matter of fact, we got them amongst Mr. Westenberg's papers. They were being sent out of this country, but they were stopped. They are not handed in with the authority of the witness?—I have never seen them.

715. (*Chairman.*) You were good enough to prepare an account for the political secretary which might be called the arsenal account. We must have that tomorrow morning. There is also another account to

which the witness has referred with regard to certain charges which are to be left in abeyance, and which might be called the political account. With regard to your private letter book, what became of the other book, the private official letter book?—I destroyed it.

716. For reason that it would not be convenient to have it exposed?—I did not want anyone to go through it.

717. Which period did that embrace, last year and the year before last?—I think it ended immediately previous to the 1st January.

718. Now, with regard to the staff commandeered under this Volksraad resolution, you give a list of people who were engaged in these railway operations, and practically they belonged to all nationalities. You had British subjects, Germans, and others?—Yes.

719. From the reports which you have submitted some idea is given of the nationality of your staff?—Yes, but it changed a great deal, because all British subjects left before the war. Some people were dismissed, and a lot of people got afraid and went away. The proportion of burghers changed enormously, a lot of them became afraid and went away.

720. Were there never more than 400 burghers in the service of the company engaged in such operations?—Oh, yes, many more.

720*. (*Mr. Ashmore.*) Did not a number of your staff become burghers for the purpose of qualifying themselves?—Yes, I do not know why they did it.

721. (*Chairman.*) This 1899 report correctly shows your employees for the last year, page 28?—That is only given as information in a general way, but you may consider it was right. Naturally there would be some fluctuation as to the number of men employed, but you may consider that the information given is correct, although there would be some fluctuations.

722. Have you any idea as to the condition of the rolling stock which was damaged much?—It did not depreciate at all before the British came in.

723. Up to the 5th June you did not damage the rolling stock very much. You say it was used without being damaged?—Yes.

724. Do you think that your action in blowing up bridges in any way kept the British Army back?—I do not know if we had any effect in keeping the British Army back.

725. Have you any idea that an arrangement was made similar to the one made in respect to the "Diggers' News"?—No, I am not aware of any.

726. Now with regard to the Rand Tram, that was a very large source of revenue?—Yes.

727. That was originally built under a contract quite apart from your concession?—Yes.

728. Under that contract the Government had a perfect right to expropriate it at cost price?—Yes, with the other properties of the company. Originally the Government had full right to expropriate the Rand Tram at cost price.

(*Shown Article 30 of the Concession.*)

729. (*Mr. Van Hulsteyn.*) This was merely a contract with the Government under which the Government had a right at any time to expropriate at cost price. Subsequently the Government abandoned that right. Article 30 was altered and the tram was put into the general concession?—Yes.

730. Will you explain to the Commission what consideration was paid to the Government for getting that enormous advantage?—I know nothing about it. There must have been a resolution of the Raad.

731. When was it?—Some time in 1890.

732. (*Mr. Loveday.*) And this was included in the general concession somewhere about 7th September, 1893, passed by the First Volksraad. Did the company give any consideration for this at all?—I do not know.

733. Now with regard to another asset, the coal mines. Am I correct in saying that your coal mines have recently been burnt out? You have not been able to work these mines for the last year, so that all the money spent by the company on the coal mines is lost?—There is a big coal field which has not been burned at all.

734. It cannot be worth very much as a coal field?—The fire cannot get at it at all.

735. That coal mine has cost you a very considerable lot of money?—I do not think it is brought out separately in the balance-sheet.

736. Will you tell me why the company has so persistently refused to make coal sidings?—I have not refused a single one.

737. You have no objection to make coal sidings?—None whatever.

738. If evidence is brought to show that you have declined it is not correct?—I have never refused. If any such refusal has been given there must have been a practical reason for it.

739. Was the cost of the construction of the Rand Tram limited to a fixed sum per mile?—I do not know.

740. What was the mileage of the Rand Tram?—About 50 miles.

741. (*Mr. Curlewis.*) On behalf of the Chamber of Mines I object to the Netherlands Railway Company Concession on the ground stated in the fourth paragraph of the statement submitted by the Chairman of this Commission in Cape Town, namely, that such a concession is prejudicial to the public. In Cape Town I mentioned that the charges levied by the Netherlands Railway Company are particularly high on the line from Vereeniging to Johannesburg, where the tariff is 7·7d. per ton per mile. I am instructed to submit that the whole concession is prejudicial to the interests of the public. I understand that the witness who has just given evidence appears here not so much on behalf of the Company, but to prove that this concession is beneficial to the public. I am prepared to show that this concession cannot possibly have any such effect.

742. (*Chairman.*) (*To witness.*) What are the coal rates on the Netherlands Railway?—It is a very long list.

743. I notice that one quotation is two pence and one-fifth per ton per mile?—No, it is neither a penny per ton per mile. We had a preferential rate for certain distances. On long distances we had our own rates.

744. And you have the benefit of a large consumption on the Free State?—I believe Mr. Middelberg has given a full statement of that.

(*Mr. Advocate Curlewis.*) I wish to point out that the regulations of the Netherlands Railway Company virtually put the mining and all other industries at the mercy of the railway company. Not only so, but their regulations have been of such a nature that it was utterly impossible for either a consignor or a consignee to recover damages for loss. The conditions of the concession absolutely freed this company from any responsibility in connection with anything that might happen along their line. But this is more a question of argument. The public have been suffering under these inflictions for years, and if there has been any reduction of such inflictions it must have occurred just before the war.

(*Chairman.*) (*To Mr. Kretschmar.*) You are at full liberty to make any statement upon the documents which we have examined you upon, which you think fit.

(*Mr. Kretschmar.*) I shall have to think about that, and to consider what I may have to add. There may be one or two matters on which I should like to make an explanation.

(*Chairman.*) I think you have said everything that is necessary, and you have answered all the questions put to you. It is for you now to say whether you wish to add anything.

(*Witness.*) Will you give me time to decide that point, say until to-morrow?

745. (*Chairman.*) Do you wish to call any witnesses here?—At present, no. If you will let me deliberate on this matter till to-morrow.

(*Chairman.*) I think that is only fair.

(Translation.)

NETHERLANDS SOUTH AFRICAN RAILWAY COMPANY.

Confidential.

Service Order No. 32.

Instruction to the Staff how to act should a portion of the line be taken possession of by the enemy's force.

The Staff shall continue to perform their duties so long as it may be possible to do so, and shall not be permitted to withdraw themselves arbitrarily from

Mr. J. van Kretschmar.

11 Oct. 1900.

their post before such post is taken possession of by the hostile troops.

The Staff are not allowed to take part in the combat, unless commandeered to do so by the proper authority, and shall not carry any arms while on duty or off duty, nor oppose a regular armed force.

Non-compliance with this instruction will be entirely at own responsibility.

Should a portion of the railway be taken possession of by the enemy, the Staff of that portion shall try, in some way or other, to proceed to portions of the railway which are not yet in the possession of the enemy, and place themselves at the disposal of the service, unless their departure is prevented by the enemy or their remaining is desirable in the interest of a family.

To defend station and station appurtenances against a regular armed force is entirely useless, not in the interest of the State neither in the interest of the company.

The Staff shall discontinue their duties when the taking possession of has been effected, after having placed their matters in order so far as this may be possible.

The stationmasters, inspectors, and the higher officials shall endeavour to be allowed to exercise only supervision over the inventory articles, rolling-stock, tools, stores, and the books of the company or to hand over such in a regular manner.

It must serve as a general principle that services are not to be voluntarily rendered to the enemy. Should in some cases compulsion by threat be exercised for the performance of certain services, then compliance must be given on sufferance, but efforts must be made to withdraw one's self as much as possible and as soon as practicable.

The Staff shall be competent to decide for themselves in order to free themselves of imprisonment by promising to remain at their stations, and not to take any part in the battle.

Strict compliance with these regulations is urgently recommended to all in the interest of themselves as well as on behalf of the Government and the company.

The Directorate:
J. VAN KRETSCHMAR.

Pretoria, 6 September, 1899.

(Translation.)

NETHERLANDS SOUTH AFRICAN RAILWAY COMPANY.

Service Order No. 33.

Commando-Services.

In case that by virtue of the laws of the South African Republic the staff of the company are commandeered to take part in expeditions or to render services in some other manner in connection with the defence, the following is stipulated:—

No. 1. The commandeering of staff must be advised by wire to the chief of the department, who shall judge whether provision can be made in the service of the person concerned. If this can take place without any difficulties the chief of the department shall advise by wire thereof to the service of the "Exploitatie," respectively to the engineer-in-chief, the Roads and Works Department, in so far as the staff belongs to one of these departments. Efforts shall then be made through the intervention of the Government Commissioner to cause the commandeering to be withdrawn.

No. 2. To those who can be spared the company assures the half of the salary if unmarried, and two-thirds of the salary when married—that is to say, if the Government pay to be received amounts to less, the difference will be made good by the company.

No. 3. To him who would voluntarily take service, without being commandeered, and is accepted by the military authority, permission for this may be granted by the chief of the division, without salary, however, and after payment of or guarantee for such an amount as the person concerned may eventually be indebted to the company, provided the railway service allows of it. If he cannot be spared, however, he shall then have to choose between not taking service and discharge.

No. 4. The persons referred to in Par. 2 and 3 are not considered to be in the service of the company, as long as they are doing military or other services for the Government.

No. 5. If the Government does no more require the services of the commandeered persons or volunteers, such persons will be taken into the service again as soon as they report themselves to their immediate chief, in as far as they are bodily suited for it, with the grant of their full salary, except those volunteers as referred to in Clause 3, par. 2.

No. 6. If persons who are in military service receive orders from the service of "Exploitatie" or from the engineer-in-chief with the approval of the Government to resume their duties with the railway department they must immediately comply with the order, on penalty of being discharged.

No. 7. The payment of monies in Holland on behalf of the volunteers referred to in Clause 3 will be temporarily discontinued, unless the funds for such payments are deposited beforehand or a sufficient guarantee is given.

No. 8. Advice must be given to the service of the "Exploitatie," respectively to the engineer-in-chief, by the heads of the departments, of every one who is accepted in the military service.

These regulations do not apply to such of the staff who by virtue of engagements with the artillery-corps are called up for ordinary or repetition manœuvres, for which ordinary leave of absence with suspension of salary is granted.

The Directorate:
J. VAN KRETSCHMAR.

Pretoria, 7 September, 1899.

(Translation.)

NETHERLANDS SOUTH AFRICAN RAILWAY COMPANY.

Service Order No. 34.

Service Secret.

It appears continually that the public is made acquainted with particulars relating to the railway service, which is in no other way possible than from information received through the staff.

It is therefore necessary to remind you of Art. 19, Service Regulation No. 1. (The employees and the other staff are prohibited giving any information or statements, or showing official documents or books regarding the interests and the service of the company to other persons than those who by virtue of the law are authorised to ask such information or statements.

They may not enter into connection, directly or indirectly, with the press regarding matters of the company without previous instructions from the chief of the service through the intervention of their immediate chief.)

It is pointed out emphatically that the public has nothing to do with the internal service, and therefore all instructions, documents, etc., relating thereto are to be considered as secret. Any member of the staff being guilty of transgression of the existing regulation will be punished with dismissal, besides making himself liable to criminal prosecution.

The Directorate:
J. VAN KRETSCHMAR.

Pretoria, September 18, 1899.

(Translation.)

NETHERLANDS SOUTH AFRICAN RAILWAY COMPANY.

Service Order No. 35.

Commando Services.

Through information received from committees, constituted at some places, which purport to organise the rendering of assistance by Hollanders and ex-Hollanders in the event of an eventual defence of the country, it appears that many of the staff are of opinion that Service

Order No. 33 prohibits them submitting their names to those committees. This is in nowise the case.

The submitting of names to the committee shall not be considered as voluntary offering of services and is generally recommended, as those who with a later commandeering can be spared can thus join the constituted organisations while their interests are being taken care of by the committees.

The Directorate:
J. VAN KRETSCHMAR.

Pretoria, September 20th, 1899.

(Translation.)

NETHERLANDS SOUTH AFRICAN RAILWAY COMPANY.

Service Order No. 36.

The Government has made use of the privilege, provided for in the concession of our company in danger of war in the interest of the defence of the country, to dispose of the railway and everything belonging to it. *Mr. J. van Kretschmar.*

The entire staff is commandeered, in accordance with Art. 2 of Act 20, 1898, for the rendering of services on the railway in the functions now held by them, under the commands of the Commandant-General, with the understanding that all instructions and orders regarding the performance of the service are submitted to the staff in the usual manner by the railway authorities. 11 Oct. 1900.

Direct orders from military authorities and war officers must, however, be complied with as much as possible by the staff, consistent with the competence of each official, if possible, after having asked for instructions from the immediate chiefs.

In these times calmness and judgment are urgently recommended to everyone, while the most exact performance of the duties of all is relied upon.

The Directorate:
J. VAN KRETSCHMAR.

Pretoria, September 29th, 1899.

SIXTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Friday, 12th October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

NETHERLANDS SOUTH AFRICAN RAILWAY CONCESSION (*Continued*).

(*Mr. Advocate Curlewis.*) With regard to a tabulated form of tariffs showing comparison of rates charged by the Netherlands Railway Company and the Cape and Natal lines, I hope to be able to lay a statement before the Commission on Monday, and, if the Commission thinks it necessary to call witnesses in support of that statement, I should like to have a day fixed, as the gentlemen interested are in Johannesburg.

(*Chairman.*) I understood that you had simply a matter of argument to submit to the Commission with reference to the point that customers of the Netherlands Railway Company could never recover damages for loss sustained in the consignment of goods to the company. That, of course, is a matter for argument, and we shall require translations of the company's regulation. We shall fix Thursday as the day for such witnesses to appear, and having seen the statements in question first, we shall give you another intimation. Are there any further documents?

(*Mr. Van Hulsteyn.*) I have some more.

(*Mr. Lance.*) I think it probable that the statement referred to by Mr. Curlewis will cover all the ground which the Johannesburg Chamber of Commerce wishes to deal with. I am going over to-day, and shall endeavour to get the statement by the Chamber of Commerce; and should there be any further points, I take it we shall be at liberty to mention them. 12 Oct. 1900.

(*Chairman.*) Yes, we will give notice of the day on which they can be given.

Mr. Van Hulsteyn referred to Dr. Lohman's remarks regarding Mr. Kretschmar.

(*Dr. Lohman.*) Of course, if he is required I shall give him notice to that effect, but I was under the impression that he was not wanted any more.

(*Chairman.*) I do not require him. I asked him at the close of yesterday's evidence if he desired to add anything by way of explanation. He said he would like to consider it by this morning whether or not he would do so. He has no doubt considered it, but he is not present. It is in his own interest if he wishes to come.

(*Mr. Van Hulsteyn.*) I would like to hand in certain accounts through him. I understand that he has no books at all, but at my request Mr. Kretschmar compiled these accounts.

(*Chairman.*) (*To Dr. Lohman.*) Will you ask Mr. Kretschmar to attend for that purpose?

(*Dr. Lohman.*) He can come, certainly. It is his wish to meet the Commission in every way.

(*Chairman.*) I can quite understand that he is not desirous to add anything further at the present moment.

THE NATIONAL BANK CONCESSION (*Continued*).

(*Chairman.*) As we took the evidence of some of the objectors at Cape Town, I think it would be more convenient to go on with the objectors.

(*Mr. Duxbury.*) Mr. Milne, sub-manager of the Standard Bank, is in attendance, and is prepared to give evidence. I appear on behalf of the Standard Bank, the Natal Bank, the Bank of Africa, and the African Banking Corporation.

(*Chairman.*) In fact, the objectors who appeared the other day in Cape Town, with the addition of the Natal Bank. I now think that it would be more convenient for all parties if we were to hear the evidence of Mr. Henderson, the manager of the National Bank, because it may to a large extent obviate the necessity of putting many questions to Mr. Milne.

THOMSON HENDERSON, sworn; and Examined.

Mr. T. Henderson.

12 Oct. 1900.

(*Witness.*) With your permission I shall read a short statement, which I now put in:—I am Joint General Manager of the National Bank of the South African Republic, Limited. The bank is the holder of a Concession granted by the Government of the South African Republic on the 5th August, 1890, for the purpose of establishing a bank in the South African Republic on the conditions set out in the deed of Concession. This Concession was thereafter ratified and approved by the Volksraad. The capital of the bank was, on its establishment in 1891, £502,000, made up of 50,000 ordinary shares of £10 each and 200 founders' shares of £10 each. On 31st August, 1895, the capital was increased to £752,000, and on 18th October, 1897, to £1,002,000. At an extraordinary general meeting of shareholders of the bank, held on 22nd March, 1899, resolutions to the following effect were passed: (a) Cumulative dividends were abolished; (b) the founders' shares were cancelled and the capital of the bank decreased by £2,000; (c) the Government's right to share in certain surplus profits was cancelled; (d) the capital of the bank was increased by £100,000 in 10,000 ordinary shares of £10 each, to be distributed (1) 5,000 shares to the holders of the 200 founders' shares, (2) 2,500 shares to the holders of the first issue in consideration of waiving their right to cumulative dividends, (3) 2,500 shares to the Government in consideration of waiving its right to participate in certain profits of the bank. The capital of the bank now stands at £1,100,000.

The agreement between the Government and the bank with reference to the Mint was on 31st May, 1899, modified in so far that the Government has the right of taking over the Mint on giving the bank six months' notice to that effect. The Mint is the property of the Government, and coin was minted by the bank on behalf of the Government for such amounts, as far as silver is concerned, as the Government from time to time sanctioned, and as regards gold coin as stipulated in the Concession. The bank had no right to issue and circulate silver coinage without the instructions and sanction of the Government. The conditions and stipulations which the bank was bound to carry out with regard to minting appear in the Concession of the bank and in Law No. 14 of 1891. The bank has always had a sufficient amount of Transvaal silver in its coffers. The minting took place on behalf of the Government, the bank for its services, expenses, etc., receiving a certain share of the profits, namely, 70 per cent. on silver.

Under Section 12 of the Mint Law No. 14 of 1891 the Government was authorised to appoint offices where gold coin shall be given in exchange for silver coin, the minimum amount of silver to be tendered at such offices to be £5. The Government never appointed such offices. The bank was not bound, any more than any other bank in the Transvaal, to pay out Transvaal gold in exchange for Transvaal silver, the Mint being a Government Institution distinct from the banking operations of the bank.

After the Mint buildings, machinery, etc., were completed, the ground on which the buildings are erected and everything belonging to the Mint were transferred to the Government as its property. The bank pays to the Government the sum of £500 per annum as rent for the Mint, and in accordance with the agreement entered into in 1899 between the Government and the bank, as above quoted, the Government has now the right at any time of terminating the lease on giving six months' notice, and when the lease expires the Government must pay to the bank for the Mint, with all belonging thereto, a sum to be fixed by valuators. Vide Section 30,m of the Concession.

The duty on bank notes is 1d. for each note issued. The amount saved by the bank on account of its exemption from payment of this duty up to date is £689.

The bank has always fully carried out its duties and obligations under the Concession.

The interests of the public, apart from the other banking institutions, have not been prejudicially affected by the Concession. On the contrary, the large business done by the bank goes to prove the favourable estimation in which it has always been held by the public.

746. (*Chairman.*) Have you a copy of the Mint Law here?—Yes.

(*English translation of the Mint Law produced.*)

747. You established the Mint at the expense of the bank?—Yes, the bank paid for everything.

748. And you paid a rent of £500 per annum to the Government—for what?—For the lease of the Mint.

749. Did you build the premises of the Mint?—Yes.

750. Did you hand over the Mint to the Government when you had built it?—We handed over everything. It was a legal transfer to the Government.

751. And then they leased it to you for £500 a year for 25 years?—Yes.

752. Has that lease been determined by the late Transvaal Government, or do you still continue?—We still continue; we are awaiting notice of termination.

753. But you never had any notice of termination?—No.

754. Therefore, when the late Government ceased to exist you were still their lessees?—Yes.

755. Subject to the termination of the lease on six months' notice on either side?—Yes.

756. Can you give us an account of the profits you made by virtue of your position at the Mint?—I can do so, but I would remark that the balance sheet of the bank, as laid before the shareholders, gives all particulars, and this has never been published. I can hand it to the Commission with the details, but it is not published. I may briefly state that the net results of the operations of the bank to 30th June, 1900, and bringing roughly the figures up to date, leaves us with a profit of about £18,000.

757. Since the beginning of the Concession?—Yes.

758. What have you understood in practice, as the manager of a bank, to be the obligation which is pointed out by Section 12 of the Minting Act, which refers to the duty of the Government to appoint offices for the redemption of the coinage?—By that I understand that when the silver coinage became depreciated and required to be called in, Government would then have sent us instructions to take from the public the depreciated coin and debit them with the amount—recover the money from them. Practically, however, the coinage has not depreciated to any extent, and up to perhaps 1898 it was very much in circulation. Practically no other coinage was in circulation.

759. Do I understand that you are right in your statement that the Government never pointed out offices where gold could be given in exchange?—To the best of my knowledge that is so.

760. Were you never called upon to give gold in exchange for silver?—Do you refer to the Government or to the public?

761. The public?—We were always ready to pay gold for silver up to the amount stipulated for in the Mint Law. If the Government had given us instructions under the Mint Law we accepted as legal tender silver up to a certain amount.

762. That is another matter, but did the Government never call upon you, to the best of your knowledge, to give gold in exchange for silver to the value of £5?—No.

763. Never throughout your knowledge?—No.

764. You have told us that the profits doing this period were £18,000 to the bank in respect of minting operations?—Yes.

765. There is an obligation upon you to keep a special account of the income and expenditure of the Mint and the profits earned. Have you that account?—That is a document which has never been published among the banks.

766. You were under an obligation by your concession to keep such an account. What did you pay to the Government out of this £18,000?—Nothing, that was the bank's profit.

767. What was the Government's profit?—Under the Concession you have to keep a special account of the income and expenditure of "the bank and of the profits earned by it. Out of this profit made by the Mint the bank shall pay to the Government such sums as may be necessary to pay the salaries of the officers appointed by the Government for the inspection"?—The Government if we had settled up to date would have received about £26,000.

768. But you have not settled up to date?—No, we have paid the Government nothing since 1896.

769. How is that?—Well, the Mint was practically

doing nothing till last year. The Mint was doing no business. We minted a lot of coin ready for circulation, but it was not put in circulation. It was held by the bank as bullion.

770. Of the net profit on the coinage 30 per cent. goes to the State for mintage and 70 per cent. to the bank. Have the Government received nothing for the last four years in respect of that?—No.

771. Neither have they received anything in respect of profits made by the Mint of which you have to pay such sums as are necessary to pay the salaries of the officers appointed by the Government?—The Government as its share of the profits under all the regulations has received already about £23,000. That is up to 1896. Since then their share of the profits would amount to about £2,600.

772. So that there is still a debit from you owing to the Government?—Yes.

773. I note that you are exempted from licence duty?—Yes, a licence on all branches of the bank. The licence is fixed by law No. 6 of 1882, and it amounts to £150 per annum for each branch.

774. How many branches have you?—Thirty-three branches have been opened in the Transvaal since the date of the Concession.

775. (*Mr. Ashmore.*) How many notes had you in circulation?—We have issued 165,500 notes since the beginning.

776. Have they all been in currency?—No, probably when they got worn we re-issued them.

777. And you have never added to that amount?—That is the extent of the notes issued. The notes that have been signed total 265,500, and we gained (by exemption from stamp duty) a penny per note.

778. What profit have you made from the privilege of note issue?—That is almost impossible to estimate. It is such a fluctuating amount.

779. As to the question of the profits, you have to pay a certain proportion of your profits to the Government?—That has been a contingency only, because we have never exceeded 10 per cent. in our distribution to the general shareholders. It is only after a distribution to the shareholders of an amount up to 10 per cent. that the Government would get any of these extra profits.

780. And you have never exceeded that?—No. In fact we have not even approached that amount, because we are compromising with certain shareholders for accumulated dividends.

781. (*Chairman.*) What profits have you made from the privilege of your paper money issue?—We had no privilege beyond any other institution.

782. (*Mr. Ashmore.*) The Government prohibited the notes from other banks being accepted at public offices for payment of taxes?—The note issue of the bank was practically in the mining districts, along the Reef.

783. But this prohibition was against such institutions as the Standard and other banks. Did it not have the effect of giving you an advantage over them as regards the currency of your notes?—I never looked at it in that light, simply because the great bulk of our note issue was in connection with the payment of wages. We did a large business at the Rand.

784. Are you of opinion that the privilege which you enjoyed excluding the note issue of other banks was of no value?—I will not say of no value, it might have a small value, an inappreciable value.

785. What would you reckon was the ordinary profit of the note issue? Do you think it would be 4 per cent. on the amount?—It might be so. We had to keep the coin always ready.

786. (*Chairman.*) You think 4 per cent. would be reasonable?—It is rather high.

787. Your average face value is about £300,000?—Roughly, for the whole number of years it would be almost less than that. I have sent in copies for each year from the beginning.

788. And it amounts to about £9,000 to £10,000 a year?—At 3 per cent. it would be £9,000 to £10,000.

789. Your point is that the other banks would be able to make a similar profit, because the restriction contained in the Concession is of inappreciable value?—Yes, from my point of view.

790. I see by Clause 15 of the Concession that the Government give the preference to the bank for the execution of all its foreign financial transactions, with certain exceptions. Have you conducted many such financial transactions?—The only one of which the bank was the agent was the two and a-half million Rothschild loan in the beginning of 1892.

791. What commission did you receive?—We made 1 per cent. on two and a half millions.

792. That is the only occasion on which you have done such business for them?—Yes.

793. (*Mr. Ashmore.*) The interest on their loan did not pass through you?—It may or may not. We had no knowledge. We only did the ordinary banking business of the Government. I often wished to raise that question in my own mind. I never saw the remittances pass through, and in that case we did not get the benefit of the Clause 15.

794. If it passed through your bank, and you thought it was remarkable that you did not derive the benefit, did you not communicate with the Government?—No, I did not do so.

795. Let me refer you again to Clause 15. Surely a remittance of interest on loans and things of that kind must be considered as financial business?—Yes, but unless the business was offered to us we did not specially enquire about it.

796. In your view you did not obtain your rights?—I never raised the question. I had nothing to do with it.

797. It was best to be on good terms with the Government?—It never occurred to me until you mentioned it just now.

798. With regard to the note issue, I see by Clause 16 of your Concession that the total sum of the notes in circulation must be covered by at least 33⅓ per cent. legal coin or bullion to be present at the Bank at Pretoria and branches. How do you interpret that?—I never raised the question. We always had 33⅓ per cent. in sovereigns.

799. (*Mr. Ashmore.*) The Government took of the first issue of the bank £100,000 in shares, and it obtained a subsequent allotment of £25,000. When did this transaction take place?—In 1899. Difficulties commenced just when we were carrying it through, and the Government will be entitled to one-tenth of the £25,000, allotted in lieu of the accumulated dividends.

800. Do the late Transvaal Government still hold that £100,000, or did they dispose of it?—I understand that the Imperial Government has it.

801. One of the articles of the Concession requires you to do the banking business of the Government without commission?—Yes.

802. Does that mean that you accepted revenue at your out station branches, and placed it to the credit of the Government in Pretoria without charging commission?—That is what we did.

803. Is there any other business you did for them without commission?—Practically everything was done without commission, but if they wished us to complete a transaction beyond the borders of the Transvaal it was subject to the usual commission.

804. You would also accept their revenue and receive or pay out cheques on their behalf at out-station branches without any charge?—Yes.

805. That is a valuable privilege to the Government?—Yes.

806. Another thing your Concession appears to contemplate was the issue of mortgage bonds. The twelfth section of the Concession states (paragraph C.) that the bank is not entitled to issue mortgage bonds for a larger amount than the monies secured upon mortgage. What does that mean? It appears as if you were under certain conditions entitled to do a large mortgage business?—It might have been so, but we have never done it.

(*Mr. Rooth.*) The meaning of this clause is that, in case the bank should give a loan to somebody, the amount advanced by the bank should not exceed the face value of the bond given as security.

(*Mr. Duxbury.*) The meaning of the original Dutch is that the bank was not allowed to issue debentures to a larger amount than the mortgage bonds they held.

(*Witness.*) That has not been done.

807. (*Mr. Ashmore.*) Do you, as a matter of fact, take fixed deposits?—Yes.

Mr. T. Henderson.

12 Oct. 1900.

808. What balance did the Transvaal Government usually keep?—The amount for the past three years was about £750,000.

809. The Government had a right to appoint a syndic. Did it do so?—Yes.

810. What did he do? Did he take any part in the management?—Occasionally he used to attend the meetings. He was a director without having any voice in the directorate. Beyond that he used to, either himself or by proxy, count the cash at the bank in order to see that we were keeping within the letter of the Concession.

811. The fourth section of the Concession stipulates for the limited liability of the shareholders by a resolution of the Volksraad. Was that ever done? The actual wording of the clause is "A separate resolution of the Volksraad shall limit the liability of the shareholders in case of liquidation, and in all other cases for all debts and obligations of the bank, the issue of bank notes being included therein, to the amount which at such a time shall still have to be paid on the shares in the name of registered holders"?—I cannot answer that question without referring to the books of the bank.

812. Another point is this, the statutes of the bank with regard to the issue of capital do not quite agree with the Concession as far as I understand. According to the Concession the owners of founders' shares were entitled to have the first issue of the shares placed at their disposal so to speak. Was that done?—Yes.

813. Did they make a profit?—That was no affair of the bank's.

814. Now, according to the statutes of the bank, the second issue of shares was also to be put at the disposal of the founders. Was that done, or were they issued on the market?—There was a second issue which was payable in two instalments of £5.

815. They had an option by their statutes, but not by the Concession?—I think so.

816. Then the statutes and the Concession do not agree upon that point?—Oh, no; I think there is an addendum to the statutes providing that a general meeting of the bank shareholders could arrange for the disposal of the second issue of shares.

817. As a matter of fact did you make a loss on the gold coinage?—I should say yes, take it all over.

818. Can you say how much silver was coined. The figure was quoted at the inquiry at Cape Town at £336,000. Was not the profit made an extremely small profit on an issue of £300,000 worth of silver?—You must remember that the expenses here are very considerable.

819. On the face value the silver is about double the bullion value, and that leaves a very large profit?—It may be so.

820. I suppose you must add the Government's profit? Yes. The Government would only get 30 per cent. of the net profit and the bank 70 per cent.

821. (*Mr. Ashmore.*) The face value of the silver would be about £165,000?—Yes, but the expenses of the Mint were running on.

822. You do not give us the expenses. This is only a statement of profit and loss, and you are required to keep a special account of income and expenditure? Can you give us that?—It would be a very elaborate thing.

823. Can you give us the expenditure on bullion and the expenditure on working operations on one side, and the receipts on the other side?—I will see what I can do.

824. (*Mr. Loveday.*) Was there never any correspondence with the Government about appointing places where silver could be redeemed?—Not to my knowledge.

825. It was never taken for granted that the bank was the proper place?—No, we took up the ground that we were waiting for instructions.

826. In the meantime was silver ever tendered and refused?—I must state this with regard to silver, that, of course, a big reserve was held by the National Bank, but the silver in the hands of other banks never totalled probably to an amount more than £20,000 for all the others banks put together, which would be a fairly normal amount for their requirements of issue. We were holding the reserve, and nobody else was holding it.

827. (*Mr. Loveday.*) That is not a reply to my question. Did any of the other banks ever tender an amount in silver and demand gold?—Yes.

827*. And that was refused?—Yes.

828. On the ground that the Government had not appointed your bank as the proper place to tender silver?—Yes.

829. I see according to sub-section D of Article 12 of the Concession that the bank is not allowed to hold more real estate than it requires for its own business, or which it may be obliged to take on foreclosure, nor to hold this for two years without the approval of the Government. As a matter of fact did not the bank purchase private property?—The bank was exempted when such property was for its own requirements, for bank premises for example.

830. I am talking about real estate outside of property necessary for the conduct of the Bank's business. According to sub-section D of Art. 12 of the Concession the bank is not entitled "to hold more real estate than it requires for its own business, or may have been obliged to take in foreclosure, nor hold these for more than two years without the sanction of the Government"?—We told the Government what we held, and they gave their sanction to hold it for a longer period.

831. Did you, as a matter of fact, acquire a property not necessary for your business, and not on foreclosure?—Not that I am aware of. I would like you to give me some idea of what you mean.

832. How long have you been manager?—Since April, 1897.

833. Well, then, the transaction to which I refer was before your time, but I presume your books will be able to give us some information. The translation was as follows:—"The Bank bought from Dr. Leyds, Erf 472, in Pretoria. They purchased this property according to the books of the registrar of deeds in 1891, for the sum of £4,500. Dr. Leyds purchased that erf in the year 1887 for £1,350. That was four years previously Five years afterwards your bank sold that erf to Mr. Bourke for £5,000?—I remember the history of that transaction. It was bought as a residence for the Mint Master. I do not know whether he occupied it or not, probably he went into it, and after it being held for a time it was disposed of.

834. Can you account for such a large sum of money being given for such a property at that time?—I cannot say anything upon that point.

835. Taking your own figures and the bank rate of interest at 8 per cent., you held this property for five years, and the accumulated interest was about £1,800, and, therefore, you must have lost on the transaction?—The price would be regulated by the property market at the time.

836. Did you hold a mortgage over that property?—I have no particulars.

837. (*Mr. Loveday.*) I would like you to give me all the particulars of this transaction, because it seems to me to be *ultra vires* so far as your concession is concerned?—I believe it was purchased as a residence for the Mint Master.

838. (*Mr. Loveday.*) That I can understand; but was it ever occupied?—I believe it was occupied by some bank officials.

839. Dr. Leyds received a salary from the bank as syndic?—Yes, £500 a year.

840. (*Mr. Ashmore.*) By Section 13 of the Concession the bank can make temporary advances to the Government. Has it ever done so?—No.

841. As a matter of fact with regard to these branch licences, many of these have been extremely very small branches?—They are. But for the fact that we are receivers of Government revenue, half these branches would never have been opened.

842. But the Government had a right to desire you to keep them open?—Otherwise it would not be worth our while. We practically adopted the policy of having branches all over the country.

843. But that was not at your own option, but at the requirements of the Government?—Yes, occasionally at the requirement of the Government, but chiefly on our own initiative.

844. As a matter of fact it would not have been worth your while to establish these small out-station banks had it not been to suit the convenience of the Government?—No.

845. (*Chairman.*) You have stated that in your opinion the stipulation that bank notes issued by institutions other than your own were not accepted by the Government offices, was inappreciable in its effect?—I think so.

846. Would you have any objection to striking it out? Supposing any part of your concession held and was recognised by the Government, would you have any objection to that clause, which you say is inappreciable in its effect, being struck out?——

(*Mr. Rooth.*) That is a matter which rests with the board of directors.

(*Chairman.*) That is a just observation.

(*Witness.*) I was going to state that the Concession belongs to the shareholders, and they would have some voice upon it.

847. (*Chairman.*) (*To Witness.*) You pointed out that only on one occasion you have done any foreign financial business for the Government so far as you recollect?—Yes.

848. (*Chairman.*) I shall ask Mr. Rooth whether he has any instructions as to that point. By Clause 15 preference is given to the holders of the Concession for foreign financial transactions.

(*Mr. Rooth.*) I do not think there is so much in this as seems to have been made by the witness. It simply means that the Government calls for tenders, and if the National Bank's tender was the lowest then the National Bank would have the preference.

(*Chairman.*) That being so, would you have any objection to the deletion of that clause?

(*Mr. Rooth.*) I have the same answer. It is a matter upon which neither Mr. Henderson nor myself have any authority to speak.

(*Chairman.*) I suppose your directors are here?

(*Mr. Rooth.*) They are rather scattered.

(*Chairman.*) Can you get them together?

(*Mr. Rooth.*) We are prohibited by martial law from meeting. I am instructed further that the Bank has received instructions from the military authorities that the board of directors shall not meet.

849. (*Mr. Duxbury.*) I wish to ask the witness whether tenders were ever called for for doing Government business?—Not that I am aware of.

850. (*Mr. Ashmore.*) I understand that shareholders have never been paid more than 8 per cent. ?—They never had more than 10 per cent.

851. Therefore, there must be a considerable sum of accumulated dividends, in exchange for the shares allotted them, and they make up an appreciable advantage. The founders came in after that for their share of the profits? —Yes.

852. In view of the considerable liability of the bank on the accumulated dividends to the shareholders, what was the value of the privilege which founders got?—It was purely a prospective value. The whole thing was gone into most exhaustively, and it was recognised that founders as a body were undesirable. It was worth anything to get rid of them and this was recognised as a just scheme.

(*Mr. Ashmore.*) In fact the founders made rather a hard bargain, and rather than continue them, it was thought best to get rid of them?

853. (*Mr. Rooth.*) With reference to that matter of the house purchased by the bank in 1891. Is it not a fact that the value of property in Pretoria increased enormously between 1887 and 1891?—I should not care to give an opinion upon that point. I was not a resident here at the time.

854. Do you know who occupied the house?—I think it was either Mr. Krause or his predecessor.

855. Under the agreement between the bank and the Mint Master the bank had to make an allowance to the Mint Master of between £250 and £300 a year for house rent?—Yes.

856. That amount was saved by the occupation of the house?—Yes.

857. With reference to the small branches which you said might not have been opened in places had the bank not being exempt from payment of licence, were these small branches for the benefit of the public?—I should certainly say so. They were opened in the first place in order to collect the revenue of the Government, and with a view to their becoming profitable as time went on.

858. Was the public benefited thereby?—Undoubtedly so, very much so.

859. You have stated that since 1897 the Government drew no profits from the Mint. Was that due to the fact that no minting was done since 1897?—No, it was only due to the fact that circumstances have been such that we have not made a division of the profits. The provision hung fire for five or six years; then we settled with them en bloc for a sum of £23,000, and as regards any further distribution we have never made up our statement for them.

860. (*Mr. Rooth.*) As a matter of fact the profit of the Mint was over £26,000?—That is, approximate.

861. And the profit which the bank has derived during all these years is a little over £18,000?—Yes, that is so.

862. You have already explained that the 20 per cent. dividend to which the Government was entitled has not been exchanged for ordinary shares?—Yes, that is the scheme. That has been passed by a general meeting of shareholders.

863. And these shares are in consideration of the share of profits which the Government would have had to get in consideration of certain privileges granted to the bank under the Concession?—Yes.

864. The Mint is separate from the bank?—Entirely so.

865. It was run by the bank for account of the Government?—Yes.

866. Can you tell us what average amount of Transvaal silver was held by other banks?—Roughly, the average for the past three years was about £17,000 to £20,000. I am taking the figures from the public gazette. That is the only information I am able to give. That is divided among all these other banks.

867. (*Mr. Rooth.*) I note that Mr. Gardiner in Cape Town raises the point that the Concession is a breach of the London Convention. As far as you are aware has the British Government ever objected to the late Transvaal Government that this Concession was a breach of the London Convention?—I have no knowledge of that.

868. With reference to the question put by Mr. Ashmore, who asked why Section 4, concerning the special limits of the liabilities of the bank——

(*Mr. Ashmore.*) If you look at the Concession you will see that Paragraph II. of the 4th Section says a separate resolution of the Volksraad shall limit the liability of shareholders in case of liquidation, and I asked was there any such separate resolution passed?

(*Mr. Rooth.*) I hand in translation of Volksraad Besluit, dated 9th August, 1890, Article 1,229, and also Article 1,231 of same date, confirming the Concession, referring to the limited liability of shareholders, together with a copy of the original Concession to the bank. If the Commission desires it I can hand in copies of the balance sheets from 1891 to 1898.

(*Chairman.*) Yes, we would like these balance sheets.

869. (*Mr. Duxbury.*) How long have you been connected with the National Bank?—Since its opening.

870. You are now joint general manager, are you not?—Yes.

871. With reference to the Mint Law, you were asked by the Chairman to give your interpretation of Section 12, and I think I understood you to say that you were under the impression that that clause merely provided for the exchange of silver when it became depreciated? Is that so?—That is what I said.

872. Will you refer to Section 8 of the Mint Law, and read it to me, particularly the third paragraph of Section 8?

(*Witness reads paragraph in question. See Appendix of Documents.*)

873. Having read that, do you still adhere to the reply you gave to the Chairman?—Yes, certainly. This is quite another matter, this is what we call defaced coin. The meaning of depreciated coin is coin in circulation worn by the user as distinguished from depreciated coin defaced by fraud.

874. You have no further reason for saying that you think Section 12 merely alludes to depreciated coin?—The Government had no object in calling in the coin. The coin was in circulation, and was being used by the public. There was no necessity for the publication of any office in the ordinary course of business. People got their value for the coin.

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875. Is there any further provision in the Mint Law for the return of worn coins?—Without reading it I cannot answer.

876. Section 6 provides for the standard weight of coin does it not?—Yes, when they are made.

877. (*Mr. Duxbury.*) I think that is more or less a matter of argument.—(*To witness.*)—You have stated that the Government had never appointed offices under Section 12 for the exchange of coin?—I stated that, as far as I knew, they had not done so.

878. Would it surprise you to know that certain interviews took place between the National Bank and the then Government of the Transvaal and the other banks with regard to that question in July, 1893, and that the National Bank then agreed to receive silver, not only in Johannesburg, but in Pretoria?—I have no knowledge of that.

879. (*Mr. Duxbury.*) And you have been connected with the Bank from its inception?——

880. (*Chairman.*) What was your position before you became manager?—I was manager in the Johannesburg office.

881. So that this subject would not come before you?—It would take the form of a circular issued to the various branches throughout the country.

882. (*Mr. Duxbury.*) Do you know that very considerable sums of silver have been cleared by the National Bank?—Certainly, without any obligation on our part to do so.

883. In the year 1898 alone, you cleared to the Standard Bank in Pretoria silver amounting to £21,000?—What do you mean by "cleared?"

884. You accepted silver, minted by you, to that amount?—Yes, no doubt, I admit that at once.

885. And you did that for some considerable time? As a matter of fact, since the bank was started?—Yes.

886. (*Mr. Ashmore.*) Giving them gold credit?—Probably giving them credit for it on clearance account.

887. (*Mr. Duxbury.*) You have stated, that in looking through the public statements of the other different banks, that you find these banks were only holding from £17,000 to £20,000 worth of silver?—Yes.

888. Do you not think it would be fair to explain, when these statements were issued, the amount of coin actually on hand when such statements were made up?—But the same thing would apply at any time, and it would be understood.

889. You state that the Bank has always fully carried out its duties and obligations under the Concession?—Yes.

890. Will you refer to the Concession granted to the Bank, and the Section 12, paragraph H., by which the Bank is not allowed to give credit to an individual person to a greater amount than 10 per cent. of the paid-up capital of the Bank?—Yes.

891. Do you remember any transaction with the firm of Kuranda and Marais? Will you explain to the Commission your transaction with that firm? Did they not become insolvent in 1893?—Yes.

892. Will you state how much that firm was owing to you on advances by the Bank?—I cannot quote the figures just now.

893. (*Mr. Ashmore.*) The capital of the Bank at that time was £502,000?—Of course, it was on bills discounted bearing that amount.

894. Quite so, they were advances?—Yes.

895. As a matter of fact, the amount advanced was the amount owing by that firm for these advances, £80,000, and the capital of the Bank was only £502,000. Are you aware of that?—It may be so, yes.

896. Do you say you were not aware of it, personally?—I cannot speak to the exact figure.

897. (*Mr. Duxbury.*) I shall not press the amount, but I shall be prepared to submit to the Commission the original petition presented by Mr. Hall, the solicitor to the Bank in July, 1893, in which the statement is made that they are creditors in the estate to the amount of £80,000. Now in the face of that fact do you still state that the bank has always carried out the terms of its concession?—I should state so, because they would have the consent of the Government to that transaction.

898. Do you find any provision in that clause or anywhere else allowing the Government to vary Clause 12 in any way?

899. (*Chairman.*) I see it is stated that the Government shall have the right from time to time whenever in their opinion the interests of the country require it. Has any such variation been made?—I cannot say that that has been so, but we have frequently applied to the Government for special powers.

900. (*Mr. Duxbury.*) So that I may take it from your reply that the bank was free to vary the terms of the concession?—I take it, only with the consent of the Government.

901. And it was sure of meeting with a very favourable reception?—Probably, yes.

902. Can you think of any other advances similar to those made to Kuranda and Marais?—It is rather difficult for me to state any. If you mention names, of course, I will give you an answer, but I cannot from memory state any similar cases.

903. (*Chairman.*) Was the loan to them individually or to a firm?—They were on bills discounted, and advances on securities, both parties in the firm went insolvent.

904. Of how many did the firm consist?—There were two partners.

(*Mr. Ashmore.*) It would be open to question whether the money was lent on a bill signed by two or three persons, when credit was given to an individual.

(*Mr. Duxbury.*) Mr. Henderson has stated that they were advances made to the firm of Kuranda and Marais.

(*Witness.*) Yes, I stated so, on bills discounted.

905. (*Mr. Duxbury.*) That is a matter for argument. At present I am quite satisfied so long as the fact is established. (*To Witness.*) About the period of these advances to Kuranda and Marais, who were the auditors of the bank?—I should have to refer to the balance-sheet.

906. As a matter of fact, were not Mr. Spence and Mr. Herschel Cohen the auditors?—Yes, they were the auditors at one time, but whether at the time you speak of I cannot say.

907. Do you know anything about the circumstances in which Messrs. Spence and Cohen severed their connection with the bank as auditors?—No.

908. You have no knowledge whatever about it?—Nothing but a very vague and general knowledge.

909. Will you give me that vague and general knowledge?—I think one of the auditors did a small business through the bank, and there was some trouble about it.

910. Nothing beyond that?—Not to my knowledge.

911. May I read to you an extract from a letter addressed to the shareholders, dated 24th March, 1893, by Messrs. Spence and Cohen?—(*Letter read.*)

912. There is more than a little question about an advance to an auditor in that letter?—Yes, he describes his reason. There is the difference of opinion as to the duties of an auditor, and that is a difference of opinion that always exists in the minds of auditors. Some auditors have an idea that they should examine the strength and safety of names on bills discounted, whereas other auditors say no, that is the duty of the bank and the directors.

(*Mr. Duxbury.*) And how about the strength and safety of the reserve against the note issue.

913. (*Chairman.*) As a matter of fact, was there any difference of opinion?—It was public knowledge at the time.

(*Chairman.*) We have only got this notice from the auditors, saying that they differed.

914. (*Mr. Duxbury.*) Was it not well known both in Pretoria and Johannesburg that this difference of opinion had arisen between the National Bank and the auditors?—I do not know, I remember speaking to one of them, now that you mention it.

15. Where were you in 1893?—I must have been in Johannesburg.

(*Mr. Duxbury.*) I have before me a cutting from the "Transvaal Advertiser" of 10th July, 1893, which throws a little light on the subject.

(*Chairman.*) Where does this lead?

(*Mr. Duxbury.*) It shows that the bank had serious difficulties with its auditors.

(*Chairman.*) I do not quite see how that comes in.

(*Mr. Duxbury.*) The public, the shareholders are interested.

(*Chairman.*) This seems to me to be rather remote. I

do not think we have got to go back to every difference of opinion between the auditors and the bank. If you can establish or show evidence that there has been a breach of the Concession that will be perfectly right.

(*Mr. Duxbury.*) I started with that.

(*Chairman.*) But with regard to any extract from the newspapers disclosing a difference between the auditors and the bank, I do not see how you can introduce such a matter unless you are able to say that this difference involved an assertion by the auditors that the bank was breaking the Concession.

(*Mr. Duxbury.*) My point in alluding to these little matters is to ascertain whether it was public knowledge that the difficulty with the auditors arose directly out of that transaction.

(*Chairman.*) It is more important to have that transaction itself. If you can establish a breach of this Concession you can do so, but the fact that there was a difference of opinion between the auditors and the bank does not count for much.

(*Mr. Rooth.*) I object to the production of these newspaper cuttings, and I may be able to produce newspaper cuttings on the other side.

916. (*Mr. Duxbury, to Witness.*) You have stated that your total issue of notes was £165,000?—No, I said 165,000 notes, the face value being £300,000.

917. What are the exact figures?—I quoted them; 165,500 notes we have issued.

918. And the face value?—That I cannot tell exactly. It is utterly immaterial. We may have issued, say, 1,000 £20 notes, and so many £100 notes, and notes of smaller value, but the total amount of issue is the total amount in the hands of the public, and that I cannot tell you just now.

919. (*Mr. Duxbury.*) It is rather an important point? You can take the figures from the last balance-sheet. I have only given the average at about £300,000.

920. You said, in reply to the Chairman, that Section 27 of the Concession provides that notes of other banks should not be accepted in Government offices?—That is so.

921. So that there are two distinct advantages which you enjoy—the stamp duty of 1d. and the exclusion of the notes of other banks from Government offices?—Yes.

922. With regard to the latter, with your very considerable note issue, do you not think that was a very great advantage for the National Bank to have the exclusive right to have its notes accepted by the Government offices?—I said it was an advantage, but not to an appreciable amount.

923. As a matter of fact, large payments in this country to the Government revenue, namely, such items as stamp duties, stand and claim licences, transfer dues, etc., amounting to considerably over two million sterling could only be paid in National Bank notes?—Oh, no; they might be paid in cheques.

924. But the notes of other banks would not be received?—That is the law, according to the Concession.

925. There is an obligation of the National Bank under section 22 to pay out your notes in cash?—Yes.

926. You are further bound by section 27 of the Concession, which states that the bank notes issued by the National Bank shall be legal tender for transactions in the South African Republic; but if the bank shall at any time fail to pay its notes in cash on presentation, in accordance with clause 22, the Government may thereupon declare that the notes of the bank are to cease to be legal tender either temporarily or permanently. Have you ever refused to pay your own notes?—You are referring to a recent occasion when the Government made the National Bank notes unconvertible into gold.

927. Did that happen?—Yes, it happened in May; that is the only occasion.

928. How did the Government proceed to do that?—I was not here in May, but I think they passed a resolution on the 17th.

929. But that only made the notes of the bank legal tender?—They were always legal tender, but it made them not payable in gold.

930. Did you or did you not, leaving proclamations and resolutions out of the question, ever refuse to cash your own notes?—Certainly, under this besluit. I presume the bank did so.

931. (*Mr. Ashmore.*) But never before?—This was in May, 1900.

932. You say that payment of notes was so refused, but you consider you were justified in doing so by proclamation of the Government?—Certainly.

933. I have before me a Government Gazette extraordinary dated 17th May, 1900, containing a resolution of the Executive Council. Had you refused before that date?—Not to my knowledge.

934. I do not think there is any provision in this resolution removing the obligation of the bank to redeem its own notes?—I think that was the only object of the thing.

(*Mr. Ashmore.*) Then I am afraid the object was not attained. The only benefit conferred by that resolution appears to me to force the circulation of the notes, but it removed no obligation from the bank.

(*Chairman.*) This seems to be a matter of argument.

(*Mr. Duxbury.*) I am not surprised that Mr. Henderson should think that they were not compelled to redeem their notes in gold.

(*Witness.*) I said "for the time being" in accordance with the resolution of the Executive Council.

935. (*Mr. Duxbury.*) The fact remains of their refusal. Do you know whether, apart from your refusal in Pretoria, that refusals were also made in Delagoa Bay and elsewhere?—We are subject to Portuguese law. We have a branch of the bank there.

936. Has your bank of your own knowledge ever refused to redeem its notes there?—Certainly, the bank has every right to do so. The notes are payable in Pretoria only.

937. Did you ever refuse to cash cheques?—Where and when do you mean?

938. At any time, apart of course from cheques which you have no funds for. I mean cheques brought to you by other banks or individuals?—I think during the last crisis of the banks it is impossible for me to say. I must reserve my statement by saying that I was not here.

939. Cannot you get the information from anyone else connected with the bank?——

(*Mr. Rooth.*) If Mr. Duxbury has evidence on this point it is surely his duty to bring forward that evidence.

(*Mr. Duxbury.*) I am prepared to do that. I should like to know if cheques for payment have been refused.

(*Witness.*) I do not know that as a matter of fact, and cannot answer until I make enquiries.

940. Will you be good enough to make these enquiries?—Yes.

941. How much silver have you minted?—£336,000.

942. I understood you to say that there was no profit on minting gold?—Little or none.

943. Then all these profits made by the Mint were made out of minting silver?—Yes.

944. Therefore it was to the interest of the bank to force the circulation of silver as much as possible?—To a certain extent.

945. Absolutely, was it not?—Yes, certainly.

946. Have you ever refused to exchange silver brought to you for clearance by the other banks?—Yes, I think I stated so; that is since the war, and before it also.

947. Why did you refuse it before the war?—On the ground taken up that the Government had not appointed a place where silver could be payable for that gold.

948. And if the Government had appointed a place would you have exchanged?—We would have had our instructions from the Government.

949. The bank was prepared to exchange the silver had these provisions been made?—Certainly.

950. (*Chairman.*) Would the Government have borne the expense of that or the bank?—The bank had nothing to do with it, we would have done it as agents of the Government.

951. This refusal was not confined to Pretoria, but probably extended to Johannesburg and Delagoa Bay?—No doubt; yes.

952. You are aware that Transvaal and British silver is not legal tender there, and yet I am instructed that the Delagoa Bay branch paid out in Transvaal silver coinage?—If it did so it was subject to the laws of Portugal. I cannot say if it did or not.

953. Now with regard to the Mint, you have told us that since its establishment you have minted £336,000

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of silver coinage and have made a net profit of £18,000; you received 70 per cent. of the profit of the Mint, and 30 per cent. was supposed to go to the Transvaal Government?—Yes.

954. You say that since 1896 the share of the Government in the profit of minting silver is £2,600?—Yes.

955. Have you any figures showing how much silver was minted since 1896?—Not in my possession just now. I can give you these figures later.

956. (*Chairman.*) I should like you to give me a statement as to the gross profit and net profit derived from minting silver in relation to its face value?—I am not prepared to give these figures as it will involve a lot of reference to the books of the Mint, but I will do my best.

957. (*Chairman.*) Now you have said that the National Bank was not privileged beyond other banks. Were you not privileged in respect to the statements furnished by you to the Government, in this respect that you were not expected to say how much gold, silver, and bronze you had in your coffers?—That was simply an instruction from the Government. I did not look at it as a privilege. We had to render a statement in a certain form.

958. You did not detail the different coinages?—Oh, yes.

959. Did you know that the other banks were obliged to render detailed statements?—Yes.

960. And were they published?—I believe so.

961. And do you not think that in this respect you were favoured at the expense of the other banks?—Of course, there is no getting away from the fact that it was a point in favour of the National Bank.

962. (*Mr. Ashmore.*) Then there is another advantage, and a very important one. You are acquainted with Law No. 2 of 1893—the Bank Law?—I am in a general sense.

963. You are aware that the whole of its provisions do not apply to the National Bank. There is a stipulation that none of the provisions of that law shall apply to the National Bank, and there is a clause in this protecting Concession which provides that no notes other than those of the National Bank shall be accepted in Government offices. You know that law applies to all banks in the late South African Republic except the National Bank?—Yes, it states so.

964. You do not think that is a very great advantage?—Yes, that is one of the privileges given to the National Bank under the Concession.

965. (*Mr. Loveday.*) Did I understand you correctly to say that your silver coinage was to be redeemed at the expense of the Government?—Certainly.

966. Would that mean that if you had an accumulation of silver in the district of Lydenburg, and you had to send it down here, the Government would have to stand the expense of that transfer?—There is a special section upon that point. As a matter of fact, there was a Mint arbitration case some years back in which it was decided that the Government had to bear the expense of bringing silver from outlying parts.

967. Does it arise out of the Mint's Concession or the Bank Concession?—I do not see anything in the Bank Concession bearing upon this matter.

968. (*Mr. Ashmore.*) The point was disputed between the Government and the bank, and it was decided by arbitration in favour of the bank. Who was the arbitrator?—Judge Ameshoff.

969. (*Chairman.*) You referred to an article in the Concession upon which you rely as establishing the obligation of the Government to meet this charge. I quite follow your point that the Mint was the Government's, and the minting operations were the Government's, but undertaken by you as agent. Have you any express provision on which you rely further? That is a matter which perhaps Mr. Rooth will look into. Mr. Rooth will kindly tell us what sections of the Concession or of the Mint Law the bank relies upon as establishing that the Government has to bear the charge of the redemption of silver and not the bank.

(*Mr. Loveday.*) There is one point arising out of Mr. Rooth's cross-examination with regard to the purchase of that house. I would like the bank manager to produce any correspondence or any resolution which the Board may have taken thereupon. I should also like him to refresh his memory with regard to the value of property in 1891. If my memory serves me correctly, it was just after a crisis, and property was at low market rates.

970. (*Mr. Ashmore.*) When you coined silver, did you always take it on as cash? If you coined £25,000 worth of silver, did you at once enter it into your books as cash?—If the Government Controller authorised us to do so, but before that it was treated as bullion in our books.

971. You never placed any of it to the Government account? Supposing you had in your coffers more silver than you wanted, you did not debit that to the Government?—No, we always held it.

972. (*Mr. Duxbury.*) Who provided the bullion?—The Mint provided it. The Mint bought the bullion, and it was paid for by the bank.

JAMES MILNE, sworn; and Examined.

Mr. James Milne.

973. (*Mr. Duxbury.*) You are the sub-manager of the Pretoria branch of the Standard Bank?—Yes.

974. How long have you been in Pretoria?—About six years.

975. With regard to cheques, have you any personal knowledge of the National Bank having refused to pay out cheques except in silver?—Yes. I remember about the 18th May this year they refused to do so unless in silver.

976. Can you give the particulars?—I presented one cheque myself, and could not obtain gold for it, and had to accept silver. That is a point well known here in town. The consequence was we refused to accept any more paper, cheques, notes, or anything from the National Bank all over the Transvaal.

977. Did that cause you inconvenience?—Yes, and the public as well.

978. We have heard from Mr. Henderson the admission that only National Bank notes were accepted in Government offices. Have you any personal acquaintance of the inconvenience and loss caused by this exclusion of the notes of other banks?—Yes, our notes were always declined not only in the Government offices, but all other offices.

979. What was your note circulation on the Transvaal?—It varies. Some time back it was between £300,000 and £360,000.

980. A very large proportion of money payments in this country went to the Government in the shape of taxes, transfer duties, and things of that nature?—Yes.

981. That was particularly so in the case of the Witwatersrand district and in Johannesburg?—I believe so.

982. And this exclusion of your notes necessarily restricted your circulation?—Certainly.

983. (*Chairman.*) What is your amount of notes now in circulation?—Well, I think it is about £330,000.

984. And has it remained stable, say, for the last ten years?—No, about ten years ago it was very small, slightly over £100,000, and it has increased not in a steady ratio. It has varied with large increases and decreases, and there was an increase before the war.

985. (*Mr. Duxbury.*) You have a very large general circulation. Am I right in saying that your notes are circulated everywhere throughout South Africa and also in London?—They are exchanged there.

986. But with regard to South Africa, your notes have a large circulation with the exception of the Government offices in the Transvaal?—Yes.

987. (*Chairman.*) What is the full extent of your grievance?—Is it that your notes were not received in the Transvaal Government offices?—Yes.

988. But notwithstanding that your note issue has continued to increase?—It has fluctuated.

989. Can you put a figure on it—as to the amount of damage you think you have sustained?—I can only do so by referring to the books, and I can say it has been a great inconvenience to the public. With regard to our own loss, I have not so far made any estimate.

990. (*Mr. Van Hulsteyn.*) Will you kindly tell the Commissioners in detail what are your objections to the National Bank Concession?—The objections were clearly set forth by Mr. Gardiner in Cape Town. The first objection is that the National Bank has the option of floating Government loans; the second is that the National

Bank enjoys an immunity from paying the bank licence; and the third is that the National Bank pays no duty on its notes.

991. (*Chairman.*) Are these all the objections your bank has with regard to this Concession?—No, I do not say so at all.

992. Will you give us some more if you have any. Have you any objection to the National Bank having the Government account?—I have nothing to say as to that.

(*Mr. Van Hulsteyn.*) I am in this position, here is a representative of the Standard Bank, and as far as the Government is concerned we would like to know his objections, because to-day the Government is banking with the National Bank.

(*Chairman.*) Mr. Gardinerh as stated his objections in writing.

(*Mr. Van Hulsteyn.*) I have had no opportunity of cross-examining Mr. Gardiner.

993. (*Mr. Rooth.*) With reference to the matter of non-payment of cheques by the National Bank, is it within your knowledge that this only took place after the issue of the proclamation by the Transvaal Government of 17th May?—I know of no case before that.

994. Now, with reference to the fact of National Bank notes being the only legal tender, do you think that in any way interfered with the circulation of Standard Bank notes?—Certainly. People could not pay them into the Government offices.

Mr. James Milne.

12 Oct. 1900.

995. To what extent?—I cannot say.

996. Do you not think it was more a sentimental grievance than anything else?—Oh, no, it was a real grievance, and a public grievance.

997. Do you know that a good many sums were paid into Government offices by means of cheques?—The cheques would have to be initialled. I am not aware of that.

998. Have you not yourself initialled such cheques?—I believe the Customs declined to take initialled cheques.

999. You do not know any case of Government offices excluding initialled cheques?—No, I was not aware of any such case.

1000. (*Mr. Duxbury.*) If that were done it would be by special favour of some particular official?—Quite so.

1001. (*Mr. Ashmore.*) On the occasion when you took silver were you offered notes?—No, they said they would pay us in silver, which I took. As a matter of fact I made a test case of it. I asked for gold and I obtained silver. The consequence was we told all our branches to cease taking National Bank paper in any shape or form.

Mr. John Whitelaw, called; and Examined.

1002. (*Chairman.*) You are the local manager of the Bank of Africa in Pretoria?—I am.

Mr. J. Whitelaw.

1003. You have heard the cross-examination of Mr. Henderson?—Yes.

1004. You have also heard the evidence given by Mr. Milne, with regard to the refusal of the National Bank to pay cheques presented to it from other banks?—I know that was so. Cheques were sent over to them, and we were not able to obtain anything unless silver or notes.

1005. When did this occur?—I should say about the middle of May.

1006. You have a note circulation in the Transvaal?—Yes.

1007. Do you consider, in view of what has been said, that the public and the banks were prejudicially affected by these advantages granted to the National Bank?—Certainly; considerably, they were put to a very great deal of inconvenience and not only that, but it tended to restrict the circulation of the other banks.

1008. And consequently damaged your business?—Certainly.

1009. (*Mr. Ashmore.*) Have you a clearing house?—No, we clear our cheques by taking them to the various banks.

1010. (*Mr. Rooth.*) Is it not a fact that the bulk of the note circulation of the Bank of Africa is at Johannesburg?—That is very difficult to say. No doubt we have a larger issue there than here.

1011. Can you state if your bank has suffered any particular loss on account of the privileges granted to the National Bank?—In what respect?

1012. In any respect?—Oh, yes, I should say we have suffered loss on account of the exclusive circulation of National Bank notes. If you ask me with regard to any special point I shall be able to give you an answer.

1013. But you come here to object. Can you say that your institution has suffered any special loss?—I do not know that they have suffered any loss, but certainly we are placed under disadvantages by which our profits are reduced.

1014. What are the disadvantages in addition to that caused by the exclusive National Bank circulation?—The payment of licence for branches for instance.

1015. (*Chairman.*) They have advantages which you do not enjoy?—Yes.

Mr. Henderson, recalled.

1016. (*Chairman.*) You have told us the Government kept a balance at your bank averaging three-quarters of a million?—Yes.

Mr. Henderson.

1017. Before May of this year had that balance been very greatly reduced or not?—Practically it came down to nothing.

1018. And did you in consequence of that approach the Government in order to be protected as to the payment out in gold?—I am not sure whether it was done by the bank's representation or the Government itself.

1019. (*Mr. Rooth.*) Mr. Henderson was out of the country at the time.

1020. (*Chairman.*) It would be a formidable situation for a bank holding the Government account, which account became practically extinguished, and perhaps large demands being made upon it. Was that the subject of negotiations between your bank and the Government?—I must reserve that point and will let you know.

1021. You cannot say whether it was at the instance of the National Bank that this policy of only paying out in silver was pursued?—It was entirely at the option of the party receiving it. If he chose to take silver it was his look out.

1022. (*Mr. Ashmore.*) Your note circulation being forced he could be compelled to take your notes?—I took it that he preferred to take silver.

(*Mr. Duxbury.*) I have no further witnesses. I will hand in a translation of the proclamation in the "Staats Courant" making National Bank notes forced legal tender.

Mr. John Emrys Evans, called; and Examined.

1023. (*Mr. Van Hulsteyn.*) You are Controller of the Treasury?—I am.

Mr. J. E. Evans.

1024. You have considered this question of the National Bank Concession and this statement was prepared by you?—It was.

Statement submitted as follows:—

NATIONAL BANK CONCESSION.

The privileges the bank possesses under its concession, as far as I am aware, are as follows:—

I.—The first option to float all Government Loans.

II.—Immunity from paying bank licence.

III.—Immunity from paying bank-note duty.

IV.—The bank is also the lessee of the mint.

I am opposed to any bank having privileges which other banks do not possess. It would therefore, in my opinion, be an injustice to the other banks were the National Bank allowed to retain the above privileges, and, in expressing this opinion, it is only fair that I

Mr. J. E. Evans. 12 Oct. 1900.

should draw attention to the fact that the National Bank is not the only bank in South Africa which enjoys privileges operating to the detriment of other banks.

I consider the bank licence, viz., £150 per annum on each branch bank, irrespective of its size, to be a most inequitable tax. For example, a branch bank in Johannesburg, employing 80 or 90 clerks, pays the same licence as a branch at, say, Lydenburg, which is probably staffed by three officers.

Two or more banks are a boon to a community, but the existence of only one bank, although it cannot be denied that it is a convenience, often gives good ground for dissatisfaction, as, by having no local competitor, it is in a position to exact excessive charges for doing business. The licence of £150 per annum for a large branch may not be unfair, but to impose that tax on small branch banks would in many cases very possibly turn a profit into a loss on a year's working, and for this reason, no doubt, many small communities in the Transvaal have in the past been deprived of the benefits which would accrue to them by banking competition.

That such profit-earning institutions as banks should contribute substantially to the revenue of the State goes without saying, but I must say that I do not consider that the system obtaining under the late Government of the S.A.R. was a proper way of taxing banks. Some plan might be adopted for taxing banks as a whole. In the Cape Colony the bank tax is levied by a fixed amount charged on the paid-up capital of the banks, and by duty on the notes in circulation, and it might be advantageous to adopt a similar method here.

I may add that I consider the existence of the National Bank, shorn of the privileges mentioned, to be a matter of public utility.

EMRYS EVANS.

Pretoria, 12-10-1900.

1025. (*Mr. Ashmore.*) You say that the National Bank is not the only bank in South Africa which enjoys privileges operating to the detriment of other banks. To what other banks do you refer?—The Standard Bank, which enjoys privileges in the Cape Colony.

1026. (*Mr. Duxbury.*) I notice you do not allude to the advantage granted to the National Bank in the exclusive circulation of its notes in Government offices. Do you think it desirable that that state of affairs should last?—I think it is a privilege which should not be enjoyed by any bank.

Mr. Duxbury was heard in argument on behalf of the objectors, as to the obligation of the National Bank to redeem its silver coinage.

Mr. HENDERSON, recalled; and further Interrogated.

Mr. Henderson.

1027. (*Chairman.*) Is it the case that you did not coin silver except on the requisition of the Government to do so?—We were not allowed to coin silver until the Government authorised us to do so.

1028. The Government authorised coinage of a particular amount, and you then coined it?—Yes; and upon occasions they refused us permission.

PRETORIA TRAMWAYS CONCESSION.

(*Mr. Seward Brice, Q.C.*) I appear for the tramway company. The assistant secretary is here, and is prepared to answer any questions put to him. Unfortunately both the secretary and the manager are in Cape Town, and have not yet received permits to come up. A statement has been put in by the assistant secretary.

(*Mr. Wentzel.*) I appear on behalf of the Pretoria Municipality, who are objectors to this concession.

Further consideration of this matter was postponed.

THE LEATHER CONCESSION.

(*Mr. Roos.*) I appear on behalf of the holders of this concession. Formal documents were handed in in Cape Town, but the cession from the original concessionaire to the present holders, the Transvaal Leather Company, has not yet been put in. I can obtain that and hand it in to the Commission to-morrow morning.

(*Chairman.*) The original concession was granted to one Ockersee for a term of fifteen years, plus two, fifteen years from 24 months after confirmation of the contract which was signed on 16th March, 1885.

(*Mr. Roos.*) The concession was authorised on the 8th October, 1884, by the Volksraad. Both the directors and the manager are in London at present, and I cannot tender any further evidence beyond putting in copy of the Volksraad resolution by which this concession was granted.

(*Chairman.*) Have you any information as to whether any factories have been erected?

(*Mr. Roos.*) I have this information that just before the war application was made to the Government to enable the concession holders to extend their factory which is working at present, by putting in more machinery, etc., but an extension of time had not been granted by the Transvaal Government when the war broke out.

(*Chairman.*) You cannot say what has been done under this concession?

(*Mr. Roos.*) The factory has been erected, and has actually been working up to the present moment. A short statement was put in with the documents in Cape Town, and that really was all the information that is in our hands at present.

Translation of Volksraad resolution put in.

(*Chairman.*) The concession has still got a year to run?

(*Mr. Roos.*) Yes.

(*Chairman.*) Is there any objector to the Leather Concession?

(*Mr. Van Hulsteyn.*) I object on behalf of the Government in the way I object to all concessions and privileges to anybody.

PRETORIA ENTREPOT, OR BONDED WAREHOUSE.

(*Chairman.*) Is the Pretoria Entrepôt represented here to-day?

(*Mr. Rooth.*) I represent it. I was instructed yesterday to ask the Commission to kindly leave the matter over until next week. I believe some evidence has already been given in Cape Town.

(*Chairman.*) All we want really is to know what profits the owner has made out of his concession, what the terms were of the lease between him and the owner of the Entrepôt, and under what conditions the present owner acquired the concession from the original concessionaire.

(*Mr. Ashmore.*) One of the requirements imposed upon the concessionaire was to erect a special store for petroleum and explosives.

(*Mr. Loveday.*) In his evidence he said he leased the building, and we want to know all about the building. It is not his building.

(*Chairman.*) We should want to see the Customs Law, if you have a translation of the material parts, to see whether the Customs Law justifies this grant.

(*Mr. Ashmore.*) The concessionaire purports to justify it under the Customs Law in his statement.

PRETORIA TRAMWAY COMPANY.

GEORGE BINDEN, being duly sworn, put in the following statement:—

Mr. G. Binden.

12 Oct. 1900.

I am the acting Secretary of the Pretoria Tramway Company, Ltd., and have been such since the commencement of the war. The Manager and Secretary of the company are not at present in this country, having had to leave at the outbreak of hostilities. I produce a statement and balance sheet showing particulars of amounts paid for the concession by the company, the capital of the company, price of rolling stock, profit and loss account, etc.; all particulars are therein set forth.

The following is a summary of the profit and loss account of the company to the 31st August, 1899, for the period of four years, since the company started operations in May, 1896:—

SUMMARY PROFIT AND LOSS ACCOUNT, 31-8-99.

	£ s. d.	£ s. d.
Receipts: Traffic - -	14,288 7 6	
Less Government Royalty	142 17 9	
		14,145 9 9
Interest - - - - -		1,893 9 3
		£16,038 19 0
Payments: Charges accounts		1,425 2 4
Traffic expenses - -		10,146 12 7
Depreciation written off:—		
Tram cars - - -	200 6 6	
Horses lost by death -	612 6 2	
Plant and tools - -	165 1 8	
Office furniture - -	66 10 1	
		1,044 4 5
Accident, cost of - -		505 18 6
		13,121 17 10
Balance - -		2,917 1 2
		£16,038 19 0

The company has always duly carried out its obligations under the concession. The rates charged by the tram for a single journey are, from the terminus to the railway station, a distance of over three miles, 10d.; from the terminus to Church Square, 6d.; from the terminus to Sunnyside Bridge, 3d.; from the bridge to Church Square, 4d.; from du Toit Street crossing to Church Square, 3d; from Church Square to the station, 4d. After 6 o'clock p.m. no lower fare is charged than 6d. Children under 12 years, 3d. all distances. These rates were approved of by Government. For the information of the Commission, I annex a statement made by the Engineer of the company, containing full particulars with reference to the work of the company.

PRETORIA TRAMWAY COMPANY, LIMITED.

To the Chairman and Directors of the Pretoria Tramway Company, Limited, Pretoria.

Gentlemen,—I have the honour to hand you my report for the year ending 31st August, 1898.

LINE CONSTRUCTION.

The line was opened for public traffic on the 25th December, 1897, but owing to a heavy flood in the Aapies River, which washed away the banks on both sides of your bridge, a through service was not commenced till the 1st January. Two spans of 15ft. each were added to the bridge, which has now a total waterway of 62ft.

Owing to the unfinished condition of the main streets through which the main line passes, all vehicular traffic was diverted on to our track upon its completion, compelling us to go to considerable expense in paving. The line is now paved for a length of 1,700 yards with heavy whinstone setts, and, as an experiment, for 50 yards with wood.

This outlay, however, will greatly diminish the expenditure on line maintenance for the future.

The line is single track throughout, with eight sidings, total length 3½ miles, is substantially laid with heavy girder rails, 81lb. to the yard, on concrete beds, electrically bonded, and available for electric traction without further outlay.

BUILDINGS.

The buildings comprise stabling for 75 horses, harness room, detached hospital for four horses, farrier's shop, general store, forage store, car shed for 12 cars, with loft overhead, offices, quarters for drivers and conductors, and cottages for manager and secretary.

A well with pump driven by a windmill gives an ample supply of water, which is laid on to the different buildings. The accommodation is in excess of present requirements and further outlay is not likely to be required for some time to come.

ROLLING STOCK.

There are eight cars in constant use. Four more are on order in view of the increasing traffic.

LIVE STOCK.

There are 50 horses in the stables, all in good condition. We lost heavily from horse sickness during the wet season—11 horses in all. Unfortunately, this is a loss to be expected every year in a greater or less degree so long as we have to employ animal traction.

TRAFFIC.

There is a regular car service of 15 minutes, the first car leaving the stables at 6.53 a.m., and the last arriving there at 8.30 p.m. In addition, special cars meet all the Johannesburg trains and await the close of the theatres and entertainments. One car is run for the use of coloured people only.

The accompanying statement shows the traffic receipts and averages from the 25th December, 1897. The receipts for the eight months and seven days amounted to £5,836 1s. 5d.; 285,735 passengers were carried, and 76,442 miles were run. As we were not working for the four hottest months of the year, we may fairly anticipate an increased average in our traffic receipts during the coming twelve months. Moreover, the terminal traffic is steadily increasing, owing to the vacant erven along the route being built on.

I have the honour to be, gentlemen,

Your obedient servant,

(Signed) C. E. MOORE, A.M.I.C.E., Engineer and Manager.

Pretoria, September 7th, 1898.

Mr. G. Binden.

12 Oct. 1900.

STATEMENT showing Traffic Receipts and Averages from 25th December 1897.

Month.	Days.	Receipts. Monthly Totals	Receipts. Daily Averages.	Passengers. Number.	Passengers. Average Fare.	Miles Run. Number.	Miles Run. Average Receipts.
		£ s. d.			d.		s. d.
December - .	7	170 - 6	24 5 9	8,146	5·0	1,365	2 5·9
January - -	31	860 - -	27 14 10	42,571	4·8	8,399	2 0·6
February - -	28	738 7 11	26 7 5	37,456	4·7	8,195	1 9·6
March - - -	31	752 2 9	24 5 3	38,189	4·7	9,132	1 7·8
April - - -	30	792 15 8	26 8 6	38,252	4·9	8,996	1 9·2
May - - -	31	736 1 3	23 14 10	34,739	5·1	9,621	1 6·4
June - - -	30	565 8 1	18 16 11	27,349	4·9	9,379	1 2·5
July - - -	31	597 2 7	19 5 3	28,495	5·0	10,764	1 1·3
August - -	31	624 2 8	20 2 8	30,539	4·9	10,591	1 2·1
	250	5,836 1 5	23 6 10·6	285,735	4·9	76,442	1 6·3

1029. (*Chairman.*) You are the assistant secretary of the company?—Yes.

1030. And you have been so since the commencement of the war?—Since the 15th October.

1031. Are the manager and secretary of the company not present here?—They are in East London.

1032. They are the holders of the concession which was originally granted to one Peter Smit on 20th January, 1890?—Yes.

1033. The period of the concession is 30 years?—Yes.

1034. And this concession was made over to you on 27th November, 1891?—No, I have not the exact date. The documents will show that.

1035. What is the date of the establishment of the Pretoria Company?—31st October, 1895.

1036. What was paid for the concession?—£7,000 is the amount paid.

1037. Paid to whom?—Paid to the Johannesburg Tramway Company.

1038. What expenditure has been made on the tramway?—The cost price per mile has been £5,299 9s. 11d. The line has been laid down in view of erecting an electric tramway in the future.

1039. What is the mileage?—3½ miles.

1040. What was the cost of the construction of the tramway?—£18,548 4s. 9d. The tramcars cost £1,979 12s. 2d. and there were besides other expenses. The statements show all these figures.

1041. (*Mr. Ashmore.*) I notice here an item—first mortgage bond £2,600. What does that refer to?—We had more funds than we wanted, which we invested in mortgage bonds.

1042. How about this £6,000 or £7,000 which is in hand?—Our bank balance is over £6,000. We have nearly £10,000 in hand. As a matter of fact, we shall require that to instal electricity as our motor power. As a matter of fact we have 15,000 reserve shares and a bank balance of £6,652, and investments in mortgages £2,600, besides the Government security of £1,000, making just over £10,000. These statements are only up to the 31st August, 1899. Since then all the stock has gone, including forage, etc.

1043. (*Chairman.*) You expect that to be paid for?—We hope so.

1044. (*Mr. Loveday.*) What horses were taken by the late Government?—Practically all the horses. We have already been paid for the forage.

1045. (*Chairman.*) You have never paid a dividend?—No.

1046. The mileage is 3½ miles. What are your charges?—We charge up from the terminus to the railway station 10d.

1047. That is about 3d. a mile—rather more?—The expenses are much heavier than they would be in many other cases and in coast towns, wages and every other outlay being much higher.

1048. Have you verified this statement, which purports to be made by Mr. Marais? Can you confirm it?—With the exception of the actual mileage, I have not been over it, but I know it must be about that. The other items in the statement are correct.

1049. It is a 15 minute service?—Yes, that was so when the report was written.

1050. You say it is now fit to take electric trams?—Yes, all that is wanted is motive power and overhead wires: the rails are laid down ready for electric working.

1051. You applied to the late Government for the use of electricity?—Yes, but we were always refused.

1052. Was any ground for that refusal ever given?—I cannot say. The Volksraad minutes would show that. The only thing I can say is that as horses consumed forage and mealies and other farmers' produce, they thought it better in the interests of the country that horses should be retained as the motive power, and not electricity, which would simply mean the consumption of nothing but coal. As far as I can perceive, that was their only reason.

1053. There is a provision in your concession that the Government may buy you out at the termination of ten years at a certain number of years' purchase of the profits or at the cost price of the works, namely, 20 years' purchase of the average net profits within three years. Now you have not declared any dividend, so that if you sold under this agreement it would be under the second head, namely, the cost price of the works?—We have made a profit, and it shows a balance of nearly £4,000. That was 20 months' running.

1054. What were the profits for the last three years?—We only ran 20 months.

1055. Then you cannot apply that expropriation clause in the first instance. You could not apply the first basis, but you could apply the second, namely, the cost price of the works?—Certainly.

1056. (*Mr. Wentzel*, for Municipal Authority.) Has this concession ever been confirmed by the Volksraad?—I cannot tell; I only took over the duties last year.

(*Mr. Rooth*, for Company.) It has not been specially confirmed, and it does not require such confirmation.

(*Chairman.*) It purports to be granted by the President and State Secretary?

(*Mr. Rooth.*) Yes.

(*Mr. Wentzel.*) My contention is that the concession is illegal without confirmation. There is no authorisation to enter into it, nor is there any ratification.

(*Chairman.*) Nothing is before us at present.

1057. (*Mr. Wentzel.*) I do not think anything will appear either from my investigation. (*To Witness.*) The concession is an exclusive one: it is a monopoly?—Yes.

1058. And 20 years of it have yet to run?—Yes.

1059. The terms of the monopoly are that only horses or mules are to be used for traction purposes?—Yes.

1060. And in terms of Article 6, the company, in the event of the Government deeming other motive power necessary, such as steam or electricity, shall have the preference?—Yes.

1061. So that they practically have the monopoly for either motive power?—Yes, that is so.

1062. Have you laid your rails with a view to employing electricity?—Certainly.

1063. (*Chairman.*) Have your rails been laid in the middle of the street or at the side?—They were laid as approved of by the Government. The plant also was approved of by the town engineer, and the rails were laid where they are with the consent of the Government.

(*Mr. Brice, Q.C.*) (for the Company.) It is perfectly clear from the concession that the company were to have this preference in the event of the Government deeming it necessary to substitute other motive power than that of horses or mules, but that becomes a question of argument.

1064. (*Mr. Wentzel*) (*to Witness.*) You say the contract was granted in 1890?—Yes, according to its terms plans were to be sent in within twelve months, and within twelve months the work had to be started.

1065. Can you tell when the work had to be started, I mean the actual date?—We knew nothing about it until the concession came into the hands of the company. The company was only floated in 1895.

1066. Are you aware of the report of the Volksraad Commission framed in 1895, in which they recommend the Government to cancel the concession if the plans were not submitted?

1067. (*Chairman.*) Was that committee appointed by the Volksraad to go into the concession?

(*Mr. Wentzel.*) Yes. The commission recommended to the Government that it be demanded from the concessionaires to send in immediate plans, so that the concession might be immediately carried out, or otherwise to cancel the concession in the event of neglect on the part of the concessionaires. Five years elapsed without anything being done.

1067*. (*Mr. Ashmore.*) When were the plans sent in?—I cannot say.

(*Chairman.*) Can Mr. Brice refer us to the authority of the Raad by which this concession was granted.

(*Mr. Brice.*) As to that I am not aware whether there was any special besluit referring to this matter, but I shall contend that it was within the competence of the Transvaal State to grant this contract according to their discretion, and what we have is this that the report of the Volksraad Commission dealing with matters of this description was framed as late as 1895. Then we have this matter proceeded with. If you look at the amount put in it shows payment to the Government of a proportional part of the amount given to them by way of security. There cannot be any possible question as to the right of the director to proceed under his contract, and there is no authority for suggesting that this scheme was not duly authorised by the Government.

(*Chairman.*) This was a question between the Government and these concessionaires, but how about the question between the Raad and the Government. The Committee of the Government appear to grant some of these concessions, but others seem to be granted by resolution of the Volksraad.

(*Mr. Brice.*) Quite so, this is a contract between the Government and the concessionaires.

(*Chairman.*) It confers an exclusive right?

(*Mr. Brice.*) If the Commission has any possible doubt.

(*Chairman.*) There is a good deal of doubt. I do not pretend to be familiar with the Transvaal law, but we shall have experts, and Mr. Loveday knows a great deal about it. There is the question as to whether the Government and the Executive have any power to grant these exclusive rights without the authority of the Raad.

(*Mr. Brice.*) I should like to have a look into it. Personally I am going into the question, and shall be pleased to place the Commission in the possession of such information and authorities as I can submit to them on the question raised.

Mr. G. Binden.

12 Oct. 1900.

(*Chairman.*) At present you agree that there is no authority of the Raad which can be vouched for in connection with this concession.

(*Mr. Brice.*) There is some doubt about it. It has been overlooked, and my object was to deal rather with the facts of the case than with the law.

(*Chairman.*) Is there any further evidence. Does any objector wish to be heard?

(*Mr. Wentzel.*) I should like to be heard on the law point after the other side. My contention is that, assuming as I do that there has been no Volksraad resolution on the subject, the concession is invalid. My proposition is a very simple one, and amounts to this: When I see the term Transvaal Government, I apply it in a special sense, meaning the President and State Secretary, and I maintain that they had not function to grant any exclusive contract. This contract purports to be granted by the President and State Secretary, who constitute under the Transvaal law the Government, and, as I have said, the Government enjoyed no such right.

(*Chairman.*) What is your authority for that?

(*Mr. Wentzel.*) In the first place I have an opinion which was given in a similar case, the case of the Pretoria Waterworks, but unfortunately it is not before me. A contract had been granted by the Government in Pretoria to a person who conceded his right to the Pretoria Waterworks. That Company had been carrying on work for some years and a conflict arose, the public not being so thankful for the benefits supposed to be conferred upon them as the shareholders of the Concession imagined they should be. There was a public meeting, and the question was raised in the Volksraad, and referred to a commission, who took the advice of the State Attorney. The State Attorney advised them that in his opinion the Government had no authority to grant any exclusive contracts of that nature, and advised that the Waterworks contract should be cancelled. The Committee of the Raad adopted this advice, and presented it to the Volksraad. The Volksraad acted upon it, and passed a resolution cancelling the Waterworks contract. I hope to be able to give you chapter and verse later on in this particular case; we have this Commission appointed to deal with all questions of Concessions generally, but they do not appear to have had the advantage of the State Attorney's opinion. As a matter of fact, the case I have quoted shows that the cancellation took place in 1898, and I contend that in terms of Law 10, of 1886, the law constituting municipalities throughout this State, the charge of streets, squares and of public portions of the town, was vested with the municipality. As a matter of fact, there was no municipality in Pretoria at the time this contract was granted, but in terms of this law the Government directly assumes the functions of a municipality until one is appointed, and Pretoria was one of those towns where under the municipal jurisdiction of the Government until such time as a municipality was appointed, the Government could not grant greater rights with regard to the disposal of municipal territory and privileges than such municipality would have, and it is clear that such a municipality could never grant a concession, *ergo* the Government could not do so either. On the other hand, you may take the position that the Government being the owners of public land, such as streets, squares, etc., had the right to dispose of these, but the law has held repeatedly that the Government has no right without the consent of the Volksraad to dispose of any State property in any way. (Several Volksraad Besluits quoted.) The point was raised in connection with the grant in Johannesburg of a large square on the condition that he erected an exhibition ground known as the Union ground. The Government made a contract with a gentleman, giving him this square on the condition that he erected an exhibition building, and doing as he wished with the remainder. This came up before the Volksraad, and the contract was cancelled, not only so, but the Volksraad again reaffirmed the principle which they said had been repeatedly read out before, that the Government has no right in any way to dispose of State property. The matter appears in the second Volksraad reports of 19th August, 1897. The Committee of that date includes several Volksraad resolutions on this principle

Mr. G. Binden.
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in evidence of what they hold was the general principle that the Government could not dispose of land. The exact words are "That Government ground cannot be dealt with by the Executive without the authority of the Volksraad."

(*Chairman.*) Do you mean that the Government cannot make a lease of any land to anyone?

(*Mr. Wentzel.*) It means "dispose of." Disposition does not necessarily mean alienation. Volksraad besluits are a prolific source of legal contention here. There is no fundamental law on the subject, any more than there is any fundamental law in connection with Concessions.

(*Chairman.*) Who cancelled the Johannesburg Concession?

(*Mr. Wentzel.*) The Volksraad. This will be seen in article 9 of the report of the proceedings of the Volksraad. The resolution states the second Volksraad having taken into consideration the report of the Commission to whom the second Volksraad resolution was committed together with the documents, and having regard to the point raised in the report of the Minister of Mines with reference to the contract entered into by the Government and the so-called South African Republic Exhibition Syndicate, and having had regard to the information before the Government and Minister of Mines resolves to accede to the report, and approve of it in so far that the said contract cannot be recognised, as the Government had entered into the same *ultra vires* against the existing laws and Volksraad resolutions.

Mr. Brice asked permission to look into the law relating to the existence of besluits and the legal effect and power of the Government in connection with municipalities.*

* *See post*, pp. 141-147, for Mr. Brice's argument *in re* Johannesburg and Pretoria Tramways.

(*Chairman.*) Here we have two resolutions showing that the Government could not dispose of State property without the authority of the Raad. I should have thought that would have appeared in the last constitution, and I should like to have any learning that can be procured upon the subject.

(*Mr. Brice.*) Bear this in mind, there must have been scores of resolutions dealing with public property. There must have been numerous reports during the last ten or twelve years, and my friend has not produced a single decision which would settle the matter. We went on with the work, and the Government recognised our position in the matter. We are besides enabled to show that the delay in the plans was the default of the Government, which did not approve of the plans until a comparatively recent date.

(*Chairman.*) It seems to me that it would not be necessary for us to go into that, because if you are wrong on the fundamental point that there was no power to grant a Concession, the Concession is bad from the beginning, the Government acted beyond its powers, and the concession is invalid. If, on the other hand, the Government had power, then the fact of delay is clearly not material as between the Government and the tramway, because the Government have received the money and condoned the breach.

(*Mr. Wentzel.*) I do not know that the Government have received any money.

(*Mr. Brice.*) Yes, they have received £142 in royalty, and they also hold our deposit by way of security. There are various other matters showing the Government's approval, such as the tariff.

(*Chairman.*) As far as the Government is concerned they really have condoned it. The question is, whether they had power to condone it or to grant it.

SEVENTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Monday, 15th October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

THE NETHERLANDS SOUTH AFRICAN RAILWAY CONCESSION (Continued).

(*Mr. Van Hulsteyn.*) I have a few accounts to put in.

Mr. VAN KRETSCHMAR was re-called, and reminded that he was still on oath.
Interrogated by Mr. Van Hulsteyn.

Mr. Van Kretschmar.
15 Oct 1900.

1068. At my request you have had some accounts made out. I believe this is the account which you rendered against the Government in connection with the ammunition which the company manufactured for the Government? (*Shows document which witness identifies.*)—Yes, I made some restrictions in my letter when I sent it in.

1069. What are these restrictions?—These are copies of accounts we had to send in to the Government. But they are incorrect, so that there may be some items which require to be altered. It was only to carry out our agreement that we have made this account out.

1070. Your idea is that the company are not bound by the exact figures stated here, and which are liable to alteration?—There are not sent in as accurate accounts.

1071. This company's accounts are what you put under the heading of the political situation?—Yes, I cannot say they are all complete here.

1072. (*Chairman.*) You made them up as best you could, and you believe them to be substantially correct?—Yes.

1073. And this is generally the account as far as you can render it against the Government?—Practically, yes.

1074. And this is the letter which you sent in along with it?—Yes. (*Letter put in.*)

1075. (*Mr. Van Hulsteyn.*) The letter states that the company does not bind itself to the exact figures. (*To Witness.*) Have you ever read this report from the Commission appointed by the Volksraad to enquire into the position of the railway about 1892?—Yes, I have read it at the time.

1076. Were you here at the time?—No.

1077. There is a copy of the agreement attached to the report between the railway company and a group of Dutch and German financiers?—Yes.

1078. Are you acquainted with that agreement?—I may have seen it, but I do not remember anything about it.

1079. I believe according to that agreement the company borrowed seven million gelden from these two groups?—Yes.

1080. I see it is stated here, but I do not know whether it is correct. It may be against that amount your debentures were deposited?—Yes, that is here.

1081. That loan of seven million gelden carried 6 per cent. interest and 2 per cent. in the shape of bonuses, 8 per cent. per annum in all? There were two half-yearly bonuses of 1 per cent.?—Yes.

1082. So that practically that loan was carrying 8 per cent.?—Yes, that is correct.

1083. Now at that time the groups who advanced that money in terms of that agreement had the option to take up the debentures at 3 per cent. less than what the Stock Exchange rate was during eight days immediately previous to the date on which they intended to take up the debentures?—Yes; I cannot exactly state the terms now.

1084. And in addition to that there was 2 per cent. in respect of the debentures which the syndicate took up?—Yes.

1085. Therefore the guarantors got 5 per cent. on all the debentures which they took up in addition to the 8 per cent. interest, is that correct?—As far as I can see here it is correct. *Mr. Van Kretschmar.*

1086. (*Mr. Van Hulsteyn.*) What I want to bring home as a matter of fact is that the whole million debenture issue was taken up at £90 15s., and the syndicate made 5 per cent. in respect of the whole million in one lump, in addition to this 8 per cent. which was realised by the working of the line. This, I contend, shows what was the nature of the company's financing?—This was all before my time. 15 Oct. 1900.

1087. (*Mr. Ashmore.*) The financing of the company was done in Amsterdam?—Yes, we have no figures here. There are some prospectuses in Pretoria, but they are only here incidentally. (*Report handed in.*)

1088. (*Chairman.*) From July, 1899, onwards who were the Board of Concessionaires, and how many were there?—I shall have to write the names down. The number was nine; one died in November or December, three of them were Germans, and six were Hollanders. Since the 1st July, 1899, Mr. Middleberg was appointed; he was managing director at that time.

PRETORIA LIGHTING CONCESSION.

(*Mr. Roos.*) I appear on behalf of the Concessionaires.

(*Mr. Wentzel.*) I appear on behalf of the Municipality to object to this concession.

VIVIAN PILDITCH, duly sworn; and statement of Pretoria Lighting Company submitted to Commission through him. Interrogated by Mr. Roos.

1089. There were previous concessions giving the Municipality all rights before the present company got its rights?—Yes. *Mr. V. Pilditch.*

1090. The present company hold its rights by contract with the Government dated 19th September, 1894?—Yes.

1091. (*Chairman.*) Were your company the concessionaires for all the concessions which were then abrogated?—The law in 1894 by the conclusion of this contract was reconstructed.

1092. I observe that your present concession cancels three other concessions, one the gas concession, one the electric lighting concession, and another supplemental to the last?—I cannot say as to that.

1093. At any rate, it cancels certain concessions. Was your company interested in any of these other concessions?—They were shareholders in the concessions, but they were not the actual grantees of the concession.

1094. At any rate the electric lighting concession was a grant which had given an exclusive right, and that was cancelled by your contract of 13th September, 1894?—Yes, from which the company derived its right. There is a resolution of the Volksraad, number 1102, the 11th August, 1892, granting this Concession.

1095. Have you a copy of this resolution?—No.

(*Mr. Roos.*) I have a summary of it in an English translation, which is to the effect that the Raad resolved that the granting of such Concessions as for town lighting, water-leading, markets, etc., did not take place under that authorisation. The authorisation referred to being a general power of attorney which the Raad was to give at the end of every session to the Executive Council, and giving any measures under these headings the force of law. But under the general laws the Government is granted power to fulfil the duties of a town council, wherever such town council does not exist, then it adds, the Raad declares that the Government shall take any measures under that authorisation that will conduce to the rapid development of the country.

(*Chairman.*) That indicates the right of the Government to grant such Concessions under a general power of attorney.

(*Mr. Roos.*) Yes. It affirms the right to grant under the general laws of the country.

(*Chairman.*) What it does is to affirm the right of the Government to carry on the business of the municipality.

(*Mr. Roos.*) It confirms the Concession granted previously by the Government.

(*Chairman.*) That is stated in Article 92, but relates only to the past.

(*Mr. Roos.*) Yes, but it would appear also to relate to the future.

(*Chairman.*) We must have an accurate translation of that resolution.

(Certified translation to be put in, also First and Second Volksraad resolutions of 1895 with reference to the granting of this agreement, namely, Article 1261, 12th August, 1895, Second Volksraad, and Article 1000, 26th August, 1895, First Volksraad.)

(*Witness.*) These resolutions affirm the right of the Government to make grants or give Concessions in connection with lighting the town where no municipality exists. No municipality existed in Pretoria at that time. It is permissible for any third party to apply for permission to set up a lighting works in competition with the present; in fact, it is expressly stipulated in Section 1, paragraph 2. It says this grant conveys no exclusive right on the part of the Government, which has the right to make similar grants to third parties. The company is a purely commercial concern, which has paid very heavily for its present vested rights. Electric lighting plant at the time of laying down our system was exceedingly expensive, and the company had to pay dearly for the experience which it took some time to acquire as to the best system to suit the peculiar local conditions of Pretoria. Moreover in terms of the contract with the Government improvements have constantly been introduced. A sum of £20,000 has been sunk in improvements within the last few years, with the result that the shareholders, who, for the greater part are to be found in London, have not up to the present received any dividend. It is gratifying to be able to record, on the other hand, the reiterated expressions of opinion that the street lighting of Pretoria is superior to anything of the kind in South Africa, and to that of many cities further afield. In addition to supplying lights to private consumers, the company has to provide for the public lighting of Pretoria until 1909. In this connection it may be noted that at present electric lighting is supplied to all the British military hospitals in the town and suburbs without undue strain upon its resources. The grant may be confidently asserted to have been made in the interests of the public. Elaborate and severe provisions appear in the deed of grant for fining the company for any defects in the lighting, and these have been rigidly enforced by the Government, even in cases of pure accident. The company has always faithfully carried out its obligations to the Government. The grant of the present concession, it will be observed, can be withdrawn at any time by giving a year's notice of expropriation to the concern on the basis set forth in Section 14 of the deed.

Mr. V. Ditch. — Oct. 1900.

1096. (*Chairman.*) Was this grant to your company in 1894 made pursuant to any arrangement with the three companies which formerly held the rights?—One company acquired the three different rights.

(*Mr. Wentzel.*) The company is identical. The capital was increased. The company was reconstructed with an increase of capital when this last agreement was entered into.

1097. (*Chairman, to Witness.*) Then your company held the whole exclusive rights at the time you entered into this agreement in 1894, and these exclusive rights were modified and apportioned in the way you have mentioned in your statement?—Yes.

1098. Was any payment made to the Government for the right?—No.

1099. (*Mr. Loveday.*) Did not the Government get a certain amount of lighting free?—Yes, under the contract.

1100. Was that not a consideration?—I do not know if it was a consideration.

(*Chairman.*) It was one of the conditions which the Government had under the agreement.

(*Mr. Roos.*) There was a contract with the Government in terms of the Concession, whereby the Government paid a sum of £6,000 a year for public lighting.

(*Witness.*) As a matter of fact, there is no lighting free to the Government, who pay £6,000 a year for public building and street lighting.

1101. (*Chairman.*) Have you issued a balance-sheet since 1894?—Yes.

1101*. Have you this document here?—Yes. (*Balance-sheet produced.*)

1102. When you received this contract, did you have to put down new plant entirely, or could you avail yourselves at all of any other plant?—A very large portion of the plant had to be entirely renewed.

1103. There is an item here of £3,909?—That is the cost to the company of arranging the contract, incidental expenses in connection with the cancellation of the one company and the reconstruction of the other, together with legal expenses and the question of obtaining the contract.

1104. (*Mr. Ashmore.*) That is the cost of the contract to you?—Yes.

1105. (*Chairman.*) Nearly £4,000 expended in legal charges, arrangement of transfer of one set of assets from one body to another?—Yes, I can give you the items.

1106. Your last balance-sheet was issued in 1898?—Yes.

1107. (*Mr. Ashmore.*) In 1897 you wrote off £7,000 for depreciation, and in 1898 £8,000?—Yes, we had very heavy losses in both years.

1108. (*Chairman.*) You have had some misfortunes, which a good many electric companies are bound to suffer when they become pioneers?—Just so; then the underground system of main was put down, which was simply money wasted.

1109. Do you know what loss that involved?—Probably £10,000.

1110. Is it owing to that circumstance that reconstruction of the company was necessary?—Yes.

1111. How much additional capital did you obtain under the reconstruction scheme?—£60,000 was the amount of the debentures issued.

1112. You have not yet been able to pay a dividend?—No.

1113. (*Mr. Ashmore.*) You have no balance-sheet for 1899?—No, it is only now that I have been in a position to get the accounts together.

1114. (*Chairman.*) I do not know whether you have stated the expropriation clause in your concession. Do you profess to understand it?—I cannot pass a legal opinion upon it.

1115. (*Chairman.*) I see by the concession that no works may be executed upon or over public ground except by permission of the Government, and you are under obligation to supply to private individuals, also that the Government is granted by a good many articles in the agreement supervision over what you do?—Yes.

1116. The Government obtain 25 per cent. of the surplus after 8 per cent. is paid?—Yes.

1117. The Government has also the right after three years, and every year afterwards to demand a diminution of the price?—Yes, provided some more economical way is discovered of decreasing the cost of working. Very heavy fines have also been imposed in cases of pure accident.

1118. Have the Government, as a matter of fact, inspected your account at any time?—Oh, yes, regularly every year.

(*Mr. Wentzel.*) There is one important circumstance to which I would like to call the attention of the Commission. My friend contends that this concession was ratified by a resolution of the Volksraad. I shall read the resolution to the Commission to show how Law 10, 1886, should be interpreted. The law is a law authorising would-be municipalities throughout the country and delegating to such municipalities the control over electric lighting, water supply, and the general public functions of such a body.

The Chairman requested that the various Volksraad resolutions should be translated, and certified and handed in.

(*Mr. Wentzel.*) The position is this. It appears that representative memorials were submitted to the Raad, the object being to delegate to the Executive Council the right to do what they liked under the general power of attorney exercised in granting concessions.

(*Chairman.*) Is that in the form of a resolution?

(*Mr. Wentzel.*) It is the first Volksraad besluit of August 11th, 1892. It explains that these concessions have not been granted by virtue of this general power of attorney, but had been granted by the Government as a Government which assumed the functions of a municipality under that law.

(*Resolution quoted at length.*)

Mr. Wentzel continues. It is very important to observe in connection with the waterworks concession that the Volksraad themselves took up the position that the Government was to act under Law 10, 1886, where no municipality was in existence.

(*Chairman.*) On the other hand that resolution does seem to show that the Raad itself held that the exercise of this power was a proper exercise by the Government in substitute for a municipality.

(*Mr. Wentzel.*) Not to the extent of granting exclusive rights. I say that the Government acting within the four corners of the law could make a contract, but could not give exclusive right.

(Witness cross-examined by Mr. Wentzel.)

1119. I will take you from the inception of the company. The original company was formed to acquire these two contracts which were amalgamated in a subsequent agreement entered into between the Government and the company?—Yes.

1120. And which agreement was an exclusive concession?—Yes.

1121. That was in 1890, according to the report. Were you secretary to the company then?—No.

1122. Did not the company order two sets of plant, and did not one of them turn out to be perfectly worthless?—Not generally speaking, a certain portion of the material supplied was very bad.

1123. Were you not supplied with wrong or bad plant so that the founder of your company went insolvent, and you could not recover?—We never attempted to recover from the founder. It is a fact that a certain portion of the plant was rotten.

1124. And the old company got into rather a precarious state?—Yes.

1125. At that time you had no fixed contract with the Government as to the supply of light. Now did you not, as a matter of fact, approach the Government on that occasion with a view to securing the old concession. You then made this new contract whereby you gave up your exclusive rights, and the Government gave you a new contract by which you were guaranteed £6,000 a year by the Government?—I did not think it was so one-sided as you put it. The exclusive rights were cancelled.

1126. And in consequence of that you were able to reconstruct, and thereupon you did reconstruct?—Yes.

1127. What is the capital of the present company?—£72,000 in shares and 60,000 debentures.

1128. So that the capital of the company is £132,000, of which £25,000 was in reserve, and you then reconstructed?—No answer.

1129. In the meantime 4,000 reserve shares had been issued, making your issued capital £104,000 and £21,000 in reserve?—Your figures are quite correct. The new capital was £72,000, of which 25,000 was held in reserve, making an issued capital of £54,500, of which half, nominally £27,250, has gone to a certain gentleman to provide £40,000 cash secured by debentures.

1130. (*Chairman.*) In other words, to secure the £40,000 a bond was passed upon the company, and half of its increased capital is given away. That is the present position of the capital of the company?—No answer.

1131. (*Mr. Ashmore.*) What interest was paid on the debentures?—Six per cent.

1132. (*Chairman.*) The persons, in fact, who assisted the company with cash to reconstruct, knowing the expenses of the past, required 6 per cent. on the debentures in order to give them an interest in the company?—It was purely an internal arrangement.

1133. (*Mr. Ashmore.*) Was the other £27,000 represented by the plant still on hand?—Yes, the full £54,000 was represented under machinery and actual cash outlay.

1134. Why did they write the original capital down to £27,000 if it was worth as stated, £54,000? It looks as if the original shareholders did not have quite the consideration which they deserved. (No answer.)

1135. (*Mr. Wentzel, to Witness.*) What is the tariff of your company to ordinary consumers?—To ordinary private consumers the price is 1s. 9d. per unit.

1136. You have an abundance of coal here?—Yes, at some little distance, but it is inferior in quality and high in price.

1137. As compared to what other parts of South Africa produce?—Well, I should think Natal coal is superior.

1138. Do you think you could get cheaper coal in Natal than that which is obtainable near Pretoria, which is reckoned the best coal in the Transvaal? What is the tariff in Durban?—I do not know. It is a municipal undertaking there, and I do not think they know themselves. I believe it is 6d. In Cape Town the tariff is 1s. 6d. to 2s.

1139. In Johannesburg it is only a shilling?—I believe so.

1140. And that is no nearer to any good coal field than you are?—No, but they are working under exceptionally good conditions and have a very large output.

1141. But they have not any fixed contract whereby they have to give £6,000 a year to the Government?—I believe they have a contract, but I do not know the value of it.

Re-examined by Mr. Roos.

1142. Is it not a fact that the coal laid down here is more expensive and of inferior quality to the coal anywhere to be found in Natal?—I do not know the cost in Natal. I cannot speak from figures.

1143. (*Mr. Ashmore.*) With regard to the Government lighting, how much per unit is charged?—It comes out at about 10½d., but any supply beyond the amount stipulated is charged 1s. 6d. per unit.

1144. It seems to me that the weaker shareholders were liable to be squeezed out by the issue of these debentures?—I think not. All the original shareholders were at liberty to subscribe to the debentures.

1145. (*Mr. Roos.*) With regard to the charge to private consumers, is it not a fact that in Cape Town suburbs the charge per unit is higher than it is in Pretoria?—Yes, by threepence.

1146. (*Chairman.*) Your electric supply in 1898 and your profit and loss account is set down at £24,663 odd. Could you separate the cost in these figures of the private lighting from the public lighting?—Yes, there is the £6,000 Government contract.

1147. Did it cost you more than £6,000 or less?—It was of course rising, and we could make very little out of that £6,000.

1148. Can you say about how much?—Probably gross 12 per cent., but that is not allowing for depreciation. I did not know that the cost is 1s. for Johannesburg, but then the Johannesburg supply is four or five times larger than our output.

(*Mr. Roos.*) We do not propose to tender any further evidence.

PRETORIA WATERWORKS CONCESSION.

(*Mr. Roos.*) I appear on behalf of the Pretoria Waterworks.

(*Mr. Wentzel.*) I appear on behalf of the Municipality of Pretoria.

(*Mr. Roos.*) Formal documents in this case were handed in at Cape Town, but as also happened in connection with the Pretoria Lighting Company these appear to have miscarried.

(*Chairman.*) Certain correspondence was put in in the form of Addenda to the Agreement. It was really a statement summarising the evidence. What is the position of the municipality with regard to the tramway and the electric lighting and the Pretoria Water Works Concession?—In the case of the tramway there is no question about the expenditure of £50,000. £7,000 was paid for the concession which is included in the £50,000, and the rest was spent upon the works of the company. No dividend has been paid up to the present moment. Had the municipality asked the commission to report in favour of the cancellation of the concession or not?——

(*Mr. Wentzel.*) I have no definite instructions, but my instructions are to oppose all these concessions tooth and nail. Certainly, sir, the tramway contract is one of those which appears to me to be the most favourable which has come to my notice. The capital is low, and has been judiciously expended.

(*Chairman.*) Yes, and provision has been made for the future. If the municipality have instructed you to oppose, they either should have the courage of their opinions, or should abandon their case. If they oppose the concession they must be in favour of cancelling it. Do they ask us to confiscate the property of those people who have spent a fairly large amount of money? Let us assume in your favour that there was an irregularity as regards the grant; was that irregularity on the part of the Government. On the faith of the Government's attitude the tramway company expended this money. Now what is the attitude of the municipality in regard to it?——

(*Mr. Wentzel.*) The question of estoppel might arise.

(*Chairman.*) I see the view you take. Now, as regards the electric lighting contract?

(*Mr. Wentzel.*) I submit that there also has been a certain amount of expenditure, and I contend that part of that expenditure has been reckless. If it is a question of expenditure, or the fixing of any value upon the company's property, I deem it my duty to lay certain information before you to controvert the balance sheet and things of that sort, and to show that high charges might have been necessitated through internal faults.

(*Chairman.*) I wish to guard myself particularly against saying that the mere authority of the Government is sufficient in this case; it is an open question. The cases are quite different in which the Government has acted plainly against the will of the Raad. Money has been invested in the new company from paid up shares, and that is a matter for the shareholders primarily.

(*Mr. Wentzel.*) I maintain that if in order to obtain a loan of £40,000 you have to give away half the share of the capital of the company, you cannot contend that this company with a total of £72,000 capital gives a fair representation of the value of the assets.

Mr. HUGH CRAWFORD sworn, submitted the following statement:—

Mr. H. Crawford.

15 Oct. 1900.

1148A. The Agreement with the Government of the South African Republic from which the Pretoria Waterwork Company derives its rights was entered into by Mr. L. G. Vorstman on the 1st March, 1888.

This agreement conveyed no monopoly rights.

As difficulty was found in constituting a company to nvest money in the concern at a time when material ;ould only be laid down at Pretoria by ox-waggon transport from Ladysmith, Natal, and Kimberley, Cape Colony, at an excessive cost, with the prospect that when nce railway communication was established a competitor night successfully compete at half the cost, application was made to the Government to convert the grant into n exclusive right. This was done by the South African Republic Government by Resolution No. 732, of the 26th November, 1889.

On the 10th December, 1889, the Vorstman agreement was formally ceded to the Pretoria Waterworks Company, Limited, the present holders.

Prior to the formation of the company Pretoria depended exclusively for its water supply on wells, and on he water flowing through the open furrow from the ipper reaches of the Aapies river leading to the open listributing furrows throughout the town. This had as ts necessary concomitant a large amount of illness.

By the establishment of the waterworks no water from he mains is forced on the consumers, as in Cape Town, But even the poorest classes can avail themselves without ;ost of the pure supply flowing through the public founains supplied from the company's mains.

As is probably known to you the Pretoria waterworks supply is derived from the marvellous springs which, ising at the meeting of the dolomite and Pretoria slate formation, constitute the sources of the Aapies River.

By the opening of an entirely distinct and new spring ndertaken at the initiative and cost of this company, the low from the said springs was increased by 1,000,000 gallons per twenty-four hours. That this is directly due o the company was affirmed by the High Court of the South African Republic in the judgment of the Chief Justice in 1899. In all respects the water supply of Pretoria by the company is confidently asserted to equal anything of the kind in South Africa. The price charged, through the opposition to the use of meters by the public, is computed at the company's meter house, is ·893 penny per 100 gallons, less than in any other town in South Africa. It will be noted that the Government conferred on the company the right to supply Pretoria with water for a term ending on the 28th February, 1939. Provision is, however, made for expropriation at the end of every three years on the basis set forth in Section 4 of the agreement. The former supply of water through he town furrows for irrigation and other purposes proceeds uninterrupted, the company having reconstructed the town furrow. About 50,000,00 gallons of water per annum have been supplied free of cost to the Government in the past for the public institutions, fountains, fire hydrants, etc., although the agreement only provides for 600,000 gallons per annum, and a reasonable supply for offices, hospitals, etc., free.

The company further, by special contract, undertook he watering of the streets for five years, now expired. The company had been established as a purely bona-fide commercial concern. Owing, however, to constant opposition on the part of the public and the Government to he introduction of meters and controlling of the consumption which the company could only ascribe to the act that up to 1889 the inhabitants had all their water, such as it was, free of cost, the company generally is reduced to returning only 2½ per cent. per annum dividend o its shareholders.

On the company's proceeding to make a house-to-house visitation in 1898, in order to regulate the charges for consumption of water, the Government of the South African Republic approached the company to delay action, as the Government wished to avail themselves of their right to expropriate.

Two of the company's directors were delegated to meet he Government Commission, and a basis for expropriation was arrived at and signed in the terms of the document attached. The political crisis and the outbreak of war prevented the actual taking over. The preliminary steps had, in the meantime, been taken to liquidate the company.

Prior to the above the First Volksraad had arbitrarily by resolution No. 1016, on the 23rd of August, 1898, annulled the exclusive rights granted to the company on the 26th of November, 1889. As, however, the expropriation followed, this is of less importance if effect be given to the expropriation.

The company has always carried out its obligations under the agreement. When that agreement was granted by the Government of the South African Republic, the latter was within its powers in granting the same, the Volksraad having in the following year, by resolution No. 592 of the 4th of July, 1890, expressly affirmed the right of the executive to grant Concessions for the better regulation of the water supply, but enacted that in future such would have to be confirmed by the Volksraad. The facts of the better state of public health from a purer water supply, the watering of the streets, the flushing of the drains, the public fountains, and also its being the cheapest system in South Africa, sufficiently indicate the serving of the public interest by the company.

Notarial copies and certified translations of the documents on which the company's rights are based are adduced.

1149. (*Chairman.*) Can you say what was the general nature of the objections of the Raad in cancelling the exclusive right granted to your company?—They are printed *in extenso* in the minutes.

1150. In general, what do they urge—was it an insufficient supply?——

(*Mr. Roos.*) Nothing more was given than just what I have stated. I believe Mr. Loveday was Chairman of the Committee.

1151. (*Mr. Loveday.*) Were not the regulations at a later period also submitted to the Raad for confirmation in 1896 or 1897?—I cannot trust my memory as to that without going through the minutes. In 1893 a further petition was sent in to the Raad asking that body not to give the company any further rights, and with that they resolved that they would not abide by the resolutions of the previous Concession.

(*Mr. Loveday.*) I think you will find at a later period that regulations were submitted. The specific resolutions for the Water Company were submitted to the Raad, and the Raad refused, because they said they never admitted this Concession. These resolutions are incorporated in the minutes of 1892.

1152. (*Chairman.*) (*To Witness.*) Have you a balance-sheet of the company up to the present time?—We have, sir.

1153. (*Mr. Roos.*) Is the company prepared to carry out the basis of expropriation arrived at?—Yes, of course two years have elapsed since that agreement was entered into, or very nearly two years, so that interest would have to be added until the date of the final settlement.

1154. (*Chairman.*) The interest of the year in which the war has taken place?—Yes.

1155. (*Mr. Loveday.*) You are charging the public for water still?—Yes, we are practically in the position of liquidators for the late Government.

1156. (*Mr. Roos.*) And the Government would get the credit of all your receipts less all your expenditure?—(No answer.)

1157. (*Mr. Loveday.*) The public are objecting to pay for water during the war?—There is a certain amount of objection.

(*Mr. Roos handed in copy of expropriation scheme.*)

1158. (*Chairman.*) According to the scheme, you pay the creditors 20s. in the pound, and the debenture holders 110 for their £100?—If payable for 1900.

1159. And in addition you paid to the company the amount for loss and profit calculated at 72 per cent. off the company's capital, that is £75,000 is what should have been paid in dividends, therefore you propose to give out a dividend that has not been earned?—There are prospects of the company paying dividends.

1160. I suppose it was carefully worked out in order to ascertain which was the most favourable basis for the company, this basis of the basis of the Concession?—No, this was practically at the dictation of the Government. We asked for expropriation on the terms of the agreement, and this proposal is less favourable than the agreement—very much so.

1161. The Concession referred to here is a Concession

of the Volksraad?—That is a Concession of the Government.

1162. Was this basis substituted for the basis of expropriation?—I thought that was approved of by the Raad?—It has never been before the Raad, but by the Executive.

1163. (*Mr. Loveday.*) Was the arrangement arrived at between you and the Government not to be submitted to the Volksraad before being put into force?——

(*Mr. Roos.*) It is really the basis contained in the Committee's report. The Committee resolved that the Raad should either give the Town Council the Concession or make such other arrangements as they thought advisable.

1164. Then this was a previous arrangement subject to the confirmation of the Raad?—Yes.

1165. And it never was before the Raad?—No, the crisis and the war intervened.

1166. (*Mr. Ashmore.*) As a matter of fact, your charges for water have been by agreement with individuals?—Yes.

1167. Every single charge you made has been by agreement between yourselves and the person who received the water. Now, what is the position with regard to recovering? You have never recovered anything upon this rate of 1s. 3d. per 100 gals. In fact, you have recovered rather less than 1d. per 100 gals.?—(*No answer.*)

1168. (*Chairman.*) You have never had sufficient confidence in your Concession to apply this rate to shareholders, and when they refused, to sue them afterwards?—No such case has cropped up.

1169. If you thought yourselves entitled to stand on your Concession, there would surely have been a means of enforcing payment. If any rate you charged under this Concession was really valid, you would have been able to enforce payment, provided you did not exceed the maximum?—We were not backed up in any way by the Government.

1170. (*Mr. Roos.*) Would the Raad arbitrarily remove the municipal rights?—One did not know whether the Raad might extinguish the whole concern.

(*Mr. Wentzel.*) This arbitrary act did not take place until 1898.

(*Mr. Roos.*) 1s. 3d. was the maximum rate.

1171. (*Mr. Loveday.*) Was it not that the company did not enforce their rights, because there was great opposition about two or three years ago?—There was opposition to a certain extent. The company determined to put in meters, and to enforce the right, and that caused great outcry amongst the public generally, the result of which was the cancellation of the Concession.

1172. (*Mr. Ashmore.*) Since what date have you been providing water?—Since 1890.

1173. And only in 1897 did you endeavour to enforce the use of meters which had been provided for by the Concession?—The company was assuming large proportions, and it was necessary to take measures for the control of the consumption.

1174. (*Chairman.*) Had you ever from the beginning of 1889, when you got the Concession, tested in any way the validity of the Concession?—No.

1175. You have never enforced against anybody your exclusive rights or your power to levy a water rate by meter?—No, the necessity did not arise until quite recently.

1176. That was in 1897?—No, that was before 1897.

(*Mr. Roos.*) I am instructed that customers had their water supply frequently cut off, and that they were sued in the courts.

(*Mr. Ashmore.*) But that was only on an individual agreement.

(*Witness.*) Under the Concession, if a man did not pay his rates, the company had a right to disconnect him.

1177. (*Chairman.*) That is to say, you could cut off the water supply of any customer who did not pay according to agreement?—Yes.

(*Mr. Roos.*) The regulation was confirmed, and as such had the force of law until the Volksraad refused to confirm.

1178. (*Mr. Ashmore.*) As a matter of fact, you did not lead the water into any man's property until he and the company had agreed as to the rate?—That is so.

1179. (*Mr. Loveday.*) Will you put in your printed form of agreement with individuals?—(*Printed form put in.*)

1180. (*Chairman.*) Can you say that this document contains a provision authorising you to cut off water in the event of non-payment of rates? (*No answer.*)

1181. In 1897 the first occasion occurred owing to the exigencies of the situation when you tried to act on the concession and the validity of this document?—Yes.

1182. Was that in the case of a meter?—There was an agitation, and the Raad cancelled the monopoly part of the concession.

1183. Is that the last occasion on which the Raad appeared on this subject?—Yes.

1184. (*Mr. Ashmore.*) How many years did you pay a dividend?—Four years ending in 1896.

1185. If you had been able to enforce your rights at 1s. 3d. per 100 gallons, you would have paid a dividend the whole time?—Yes, that is the maximum rate.

(*Mr. Roos.*) I should like to point out that the company had no rating power for water. It could not force water on any of the inhabitants.

(*Mr. Loveday.*) It certainly did not have such power, but where were persons to get their water supply?

(*Mr. Roos.*) There were still a number of public sources.

(*Mr. Ashmore.*) And there still existed the original water supply, which people used to have before this concession was put into effect.

1186. What is your whole supply? You claim to have increased the supply by 1,200,000 gallons?—I cannot answer that absolutely, but at least it is about 1,000,000 gallons.

1187. Do you claim that the whole supply is a new supply, in addition to what was discovered at the springs?—Yes, some of the springs have disappeared altogether to my knowledge. I have known some of these springs to last for thirty years with an excellent supply of water, and to disappear, the supply being thoroughly exhausted.

1188. (*Mr. Loveday.*) Have you evidence to show what is the quantity of water rated to the town at the present moment?—Yes, I think that information can be given.

1189. (*Chairman.*) The original capital of the company was £100,000, divided into £1 shares and £25,000 debentures. What were these debentures—were they founders' shares, and had they special rights?—Yes, they only received a dividend when a certain preferent dividend had been paid to shareholders.

(*Mr. Roos.*) I also wish to refer the Commission to Act 10 of 1886.

(*Chairman.*) Yes, I follow you with regard to the municipal law. Under that law you say the municipalities have the power to grant exclusive rights?

(*Mr. Roos.*) Not exclusive, but to enter into contracts for the supply of water.

(*Chiarman.*) If there was a right to the municipality under that law, it would not follow there was any right to the Government by virtue of that law of 1889.

(*Mr. Roos.*) Prior to that I take the general power of attorney of 1888.

(*Chairman.*) Yes, there is a specific resolution that the Government could not grant these rights by virtue of that resolution without the authority of the Raad. This resolution refers to Klerksdorp, Ventersdorp, and other towns, and it would merely be a ratification of the resolution adopted for Pretoria.

(*Mr. Roos.*) I do not see that it touches Pretoria at all. Then in 1890 there was a commission's report which draws attention to these concessions and their royalties, including this one, and there is a confession of great bewilderment on the topic. It says that it is hardly possible to determine with accuracy the concessions, etc., and it then resolved that such concessions as gas, electric lighting, tramways, and the better regulation of water supply shall in future be confirmed by the Raad unless the President, with the advice and consent of the Executive Council, shall do so on the strength of a petition which makes it clear that the case is one of urgency. It also instructs the Government, where it is at all possible, to establish these municipal institutions, and advises that the Government should obtain the sanction of the Raad. In 1892 a resolution of the Raad negatived the right

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of the Government to act under their power of attorney.

(*Chairman.*) Then nothing of importance occurs until 1895, when the Second Raad institutes this commission, and reports favourably with regard to the company. That report of the commission is accepted by the Second Raad as well as by the First, and there is a particular recognition of the concession then. Assuming in your favour that there was such a recognition, do you contend they have not the right to cancel the concession?

(*Mr. Roos.*) My contention is that in 1895 the Second Volksraad found that all the obligations had been complied with. In 1898 a committee of the other Chamber found that some of the obligations referred to by the Second Raad were not complied with. We had really a deadlock between the two. In 1889 the secretary of the company wrote to the Government in connection with this obligation form and monetary rights, also to the effect that the company were prepared to make a town furrow and to keep it in repair. The Government, however, insisted on the water pipe being constructed. The Select Committee of the Second Raad found that the company had fulfilled its obligations in making the water furrow, but evidence was brought to show that the concessionaires had not carried out their obligation as they had failed to construct a water pipe.

(*Chairman.*) After all, you cannot very well ask us to say that the Concession should stand when it has been cancelled by the sovereign body and does not really exist.

(*Mr. Roos.*) We take up this position, that we think expropriation should be carried out as a matter of equity.

(*Chairman.*) Supposing the Transvaal Government were sitting in this place now, you would not be able to enforce any rights granted to you under that Concession.

(*Mr. Roos.*) These rights may not have any legal existence, but they are strongly equitable. The company was constituted with an exclusive right. The company would not have come into existence except upon the strength of that exclusive right. All the material for the works had to be imported into the Transvaal at a period when there was no railway transport, and this was a very expensive item by itself.

(*Chairman.*) I think it is perfectly fair to say that there were risks attendant as to the conditions under which these Concessions were worked. Still this Concession so far as its exclusive rights are concerned is no longer in being.

(*Mr. Roos.*) That is true.

(*Mr. Ashmore.*) What you are asking for is expropriation terms.

(*Chairman.*) But you are asking for it as an act of grace, as you have spent money.

(*Mr. Roos.*) Yes, we cannot ask for it as a legal right, but we certainly think we have a moral claim.

(*Mr. Loveday.*) You say that in the Municipal Law 10, 1886, that the approval of the regulations is vested in the Executive Council. Why were these regulations, such being the case, referred to the Second Raad and amended and approved?

(*Mr. Roos.*) Thy were submitted together with the Besluit No. 77 of 1890. It does not speak of water regulations, but general regulations. We maintain that such regulations can be drawn up and must be submitted in the way I have described.

(*Mr. Loveday.*) Why did the Government ever submit water regulations for Pretoria and your special regulations to the Raad?

(*Mr. Roos.*) That I cannot explain. By the Besluit No. 77, 1890, I say they should not have submitted the regulations because they had the right to make water regulations. They could have enforced regulations at once, but being deceived by the Besluit 77 of 1890, they thought they had to submit it under that.

1190. (*Mr. Loveday.*) You were anxious to get these resolutions confirmed and recognised; why did you not point that out.

(*No answer.*)

(*Chairman.*) A case has been offered for our consideration which requires a very clear answer, and we have a perfectly open mind upon this question. The Government and the Raad practically in 1895 gave the company, you contend, a clean bill of health by saying that it had carried out what it ought to do. That was adopted and confirmed by both Raads. It is only after that, in 1898, without hearing the company, that the Raad cancels the concession.

(*Mr. Wentzel.*) I have a translation of the report of the Committee appointed by the Raad in 1898.

1191. (*Chairman.*) Did that Commission hear evidence?—No.

[Translation put in as referred to by Mr. Wentzel of Report of Raad Committee of 1898, also Volksraad Resolution, Article 16.]

1192. (*Mr. Roos, to the witness.*) Do you know as a matter of fact that the account for making the furrow under the terms of the Executive Council's resolution of 1899 was approved of by the Public Works Department of the Transvaal Government. The Public Works Department had to check it and see whether the work was constructed in accordance with requirements?—This was a special case and the Landrost had to carry it out or veto it according to the manner in which the work was done. This, however, was before I joined the company.

(*Mr. Loveday, to Mr. Roos.*) Can you inform the Commission whether this concession was published for public information after it was granted? The usual course was to publish all these concessions in a gazette.

(*Mr. Roos.*) The concession is published in a summarised form in the minutes of the Second Volksraad of 1895.

(*Mr. Loveday.*) I mean at the time it was granted the concession was materially altered, and I wish to know if the original agreement was published and not the other. In 1895 the concessionaires had never put their concession in force, but they had entered into private contracts to supply water.

(*Mr. Roos.*) They carried out the obligations as regards depositing the Government guarantee, etc.

(*Mr. Loveday.*) In enforcing their rights they seemed to have made private arrangements with different parties in town.

SWAZILAND CONCESSIONS.

(*Mr. Roos.*) Before the Commission goes into any further matter I should like to ask whether it was the intention to deal with any Swaziland Concessions?

(*Chairman.*) They do not come within our reference. One or two of these were referred to on the first day, but we are not going into them.

(*Mr. Roos.*) I am also instructed to ask if the Commission will go into any mineral concessions granted by native chiefs in terms of the Gold Law.

(*Chairman.*) We have nothing to do with these.

PRETORIA MARKET CONCESSION.

Mr. De Korte submitted the concession, and said this concession was entered into by virtue of Law 8 of 1888, In 1858 certain regulations were made for holding markets, but no general laws were made until 1883, and in 1888 a law was passed which practicaly re-enacts the law of 1883. By that law it was enacted that in every town there should be a market place, and the Government shall appoint a market-master to hold control of the market, which control shall be in the hands of the Government, and in any place where a municipality exists the municipality shall have the right to control the market. Further, there is an advantage to the public in this contract, because by Section 196 of the Law of 1883 2½

per cent. had to be paid to the market, and 1½ per cent. went to the profit of the market holder, and 1 per cent. went into the pocket of the Government.

(*Chairman.*) 2½ per cent. of what?

(*Mr. De Korte.*) The proceeds of the sales. By Section 19 of that law provision is made that over and above the salary of the market-master, the market-master shall receive an allowance of 2 per cent., so that if the Government carried it out they would only receive an advantage of ½ per cent., whereas when this contract was entered into the Government got their full 1 per cent.

JOSEPH RUVIDGE DYER, called; and Examined. *Mr. J. R. Dyer.*

1194. (*Chairman.*) Are you the director of this company?—I am director and trustee.

1195. When did you acquire this Concession?—Three or four years back.

(*Mr. De Korte.*) I have a copy of the last cession in 1895.

1196. (*Chairman, to Witness.*) What did your company pay for it?—I am not certain, I think £75,000 or £80,000 shares.

1197. Did you acquire it from the company?—The original Concession was granted to Mr. J. D. Celliers, who made it over to the Netherlands Bank, and it was then turned into a company. That company failed, and went into liquidation. Then the present shareholders purchased it, and gave for it 75,000 or 80,000 shares. This is shown in our balance sheet. We had no balance sheets last year on account of the war, but the balance sheet for 1898 can be handed in.

1198. Did your company erect any building or not?—No; the buildings were erected when we purchased them.

1199. Was the company from whom you bought exclusively engaged in this market work?—No, it was a banking company, the Netherlands Hypothek Bank. They erected buildings and we purchased them and floated the company upon it.

1200. What rent are you now paying the Government? What was the last payment you made in rent?—I think it was £200. We are in the second five years now.

1201. Is it a stone or iron building?—Stone and brick, with an iron roof.

1202. Had the plans been approved of by the Government?—Yes; we wished to add to the building some time ago, but the plans were disapproved of. We wanted to erect a theatre on a portion of the ground.

1203. That they would not allow?—It did not suit the President's views.

1204. (*Chairman.*) Yes; any connection between a theatre and a market would be a little remote. Of course, you intended to make some money out of the building?—The management and control of the market buildings were entrusted to the company on condition that the market should be held in accordance with the law of 1888.

(*Mr. De Korte.*) The whole of that law does not apply to us. The law provided that in the event of there being no municipality, the Government appointed the market-master. The 19th section to which I refer merely says that the establishment of the market was to the advantage of the public.

(*Chairman.*) I do not quite understand this article 13, with reference to the 2½ per cent.

1205. (*Mr. Loveday.*) The produce which might be sold outside the market buildings, what is that reference to?—Outside the market buildings such articles as wood, forage and other articles, including cereals, all except vegetables were sold outside the market.

1206. Where did you sell these?—In the hall, the other produce was sold outside on the wagons in the square.

1207. With regard to the ground outside the market you only are allowed to sell produce upon it?—That is the only place we can sell upon except a small portion we have not built upon.

1208. Has anybody ever objected to your using land outside the buildings?—This bit if ground is 200ft. by 300ft., as the whole extent of the ground upon which the buildings are erected, and therefore we must have an outside market.

1193. (*Chairman.*) Is the concession held by a company?—It is now held by a company, but it was first granted to Mr. Celliers, and he surrendered all his rights to the company. 15 Oct. 1900.

(*Chairman.*) We have not got any details of the concession.

(*Mr. De Korte.*) I have not put it in at present, but all the documents have been properly registered in the Deeds Office, and they will be put in later on.

(*Mr. De Korte.*) The market master must sell outside on the market square. They hold their buildings under a lease, and they have to carry out all the duties of the market-master.

1209. (*Chairman.*) Are the duties of the market-master to sell stuff all over the market square?—Yes.

1210. (*Mr. Ashmore.*) What section gives you the right to appoint a market-master. Does the market-master who is paid by you remain under the authority of the Government?——

(*Mr. De Korte.*) The market-master is appointed by the company subject to the approval of the Government, asd the Government has the right to suspend or discharge him.

(*Mr. Ashmore.*) What is your authority for levying the 2½ per cent.

(*Mr. De Korte.*) By the Law of 1888. That is a custom through the whole country. The market-master must sell by auction, and by the 19th section he receives 2 per cent. back again, the Government getting 1 per cent., that 1 per cent. being a portion of the dues levied from within and outside sales.

(*Chairman.*) How do you maintain that this is not a concession.

(*Mr. De Korte.*) There is no monopoly.

(*Mr. Loveday.*) This is true, provided that the public shall not be compelled to make use of these market buildings, but if there is one public market only you force the people to come to it.

(*Mr. De Korte.*) But the Government may authorise another market square at Pretoria. There is no compulsion upon anyone to go and sell or buy upon that market. Should the Government deem it advisable to fix a market in some other part of the city there was a perfect right to do so.

1211. (*Chairman.*) Your point is that supposing this company did not behave itself, the Government could establish a competitor?—Yes.

(*Chairman.*) Not exactly under equally advantageous circumstances, because your company would have the old market. At what price do you put the value of the market rights and the building?

(*Mr. De Korte.*) The secretary might be able to explain these things.

(*Witness.*) It is in the second balance-sheet. Of course these amounts vary; the property is valued at £66,000 in 1898.

1212. What was the amount given to the company?—It was capitalised by the directors, each of whom takes his own share of the liability.

1213. (*Mr. Ashmore.*) You value this concession at £88,000. What is the value which you say the buildings would cost to erect supposing you had to do it yourselves?—£226,000.

1214. So that this concession practically stands you in £62,000. Now what did J. D. Celliers give for it?

1215. (*Mr. De Korte.*) The market buildings have greatly increased in value?—We do not dispute that, but the buildings are supposed to be worth about £25,000.

(*Mr. De Korte.*) They cost £20,000 at least. Some of the land which was purchased by the company is now worth ten times the purchase price.

1216. (*Mr. Ashmore.*) Where is the profit and loss? The market buildings revenue is put down at £3,700?—That is rents of buildings used for stores and shops. Certain portions of the buildings are used for stores and shops, for which we get no rent from any extraneous source, but there are other profits coming out of the market too which are nothing at all to do with this concession.

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1217. (*Mr. Ashmore.*) Yes; for example there is £742 for agencies and commission. These market buildings were erected, you say, at a cost of over £20,000?—Yes.

1218. While they are returning an enormous profit?—That appears to be the case, but the actual profit of the market is very small.

1219. (*Chairman.*) Is there any restriction of your power in letting the building?—There is. If you wanted to have any special business to which the Government could not agree the company had no power to let it. No business can be prosecuted without the consent of the Government.

1220. The control of the market buildings is entrusted to the market master on condition that the laws and regulations prevailing are complied with. What do you let these buildings for?—For shops, cafés, and so forth. One special building was erected for these businesses and another for the market buildings. Little or no rent is derived from the buildings for market purposes.

1221. Provided you satisfy the Government's requirements you are practically allowed to sell anything you please—that is the real profitable part of the concession. That yields practically £3,700, and you pay £200 a year for it?—We have to maintain buildings which are connected with the Government—that is, the market buildings—and with regard to the others, the shops are only let subject to the approval of the Government.

(*Mr. De Korte.*) The plans were submitted to the Government, and duly approved of by them, and the Government have all along been obtaining 1 per cent. of the market dues.

(*Chairman.*) But the market dues paid by the company for the whole year were only £200.

1222. (*Mr. Ashmore.*) What was the gross profit on an average from the market?—About £500 a year.

(*Chairman.*) Where is the resolution of the Raad authorising this grant?

(*Mr. De Korte.*) There is no special resolution by the Raad, but under Law 1888 we maintain that the grant was authorised by the Government.

(*Chairman.*) What right is there under that law for the Government to assign its rights?

(*Mr. De Korte.*) The Government had the right to appoint the market master.

(Translation put in of section of Law 1888 empowering the Government, according to the view of Mr. De Korte, to assign this right to the company.)

(*Mr. De Korte.*) And in addition the Government get 2½ per cent. out of the revenue, from which is deducted the salary of the market master, and the net revenue of the Government from the operations of the market company is 1 per cent.

(*Chairman.*) Under this Concession not merely is the market master appointed by the Concessionaires subject to the approval of the Government, but they have the right to let for their own profit what is practically the principal site in Pretoria.

(*Mr. De Korte.*) The Government had the right to lease any piece of State ground, and this was only granted for 99 years.

(*Chairman.*) Yes, but the same remark would apply supposing the lease was for 999 years. Surely this contract must have been before the Volksraad. There is, first, the market hall in which the sale of vegetables is conducted. Beyond this market hall, but still under cover, there are several shops, stores, and cafés, which are not for market purposes at all, and where anybody may carry on business. You get a rent from this storage. We should first have the profits derived from the market hall, then a statement of the rents from this extraneous storage, and then the profits from the market dues.

(*Mr. Wentzel.*) There is a huge three-storey building quite apart from the market, from which the revenue account is derived.

1223. (*Mr. De Korte.*) In the first year of the company's working the profit was only £400 a year, but, deducted from that amount there was a certain amount charged to the collection of dues which were unpaid?—This statement does not show the value of the market Concession.

(*Mr. De Korte.*) Various amounts have been separated. Mr. Loveday should know, as he was a director of the company.

(*Mr. Loveday.*) I am not a director any longer. For the year ending October 31, 1898, the gross receipts were £3,402. What were the charges against that. I notice the salaries account and staff absorbed £1,200 per annum, £100 a month, there being four market masters and two clerks. Then wages, sanitary charges, water, stationery, etc., are put down at £480, or £48 a month; it also seems that 12½ per cent. was the rate of interest charged. It must have taken an enormous amount of work to run this Pretoria market.

The witness was asked to make up a statement for the past five years showing the profits, the charges, and the receipts, also the gross receipts on the 2½ per cent. sales and the gross receipts on the buildings.

(*Mr. Wentzel.*) There are a couple of points submitted by Mr. De Korte which I should like to refute. The first point is the question of public benefit. According to the Market Law that of the 2½ per cent. duty which was levied, 2 per cent. was returned to the market master, while under this concession the concessionaire only takes 1½ per cent. I have looked at the law, and I cannot agree with the reading of my friend. I contend that the 2 per cent. which the market master gets is not 2 per cent. of the Government commission. The Government is entitled to 2½ per cent., and the market master is entitled to 2 per cent. of that, so that the argument with regard to the public being benefited falls to the ground. Article 12 stipulates that the market master shall weekly pay to the landdrost of the district all monies accruing to the Government from the proceeds of the market, who at the same time will examine the books. Article 19 sets forth that the market master receives from the Government a fixed salary, and shall give security for the due fulfilment of his duty; he shall receive over and above that salary 2½ per cent. of the market monies. I submit that means the money which the Government gets, and in a large town like Pretoria that money would run into thousands of pounds. I admit that the language is ambiguous, and capable of more than one construction. The colonial expression, "market monies" is "market proceeds." On the question of public benefit there is this other point; I maintain that the market should undoubtedly be a municipal undertaking. The municipal law passed in 1886 contemplates this, as it assigns, as one of the sources of municipal revenue, "market monies." Then the next stage is the market law of 1888, which deals with the holding of markets generally.

(*Chairman.*) I do not think any of us doubts the desirability of having markets in the hands of the municipality.

(*Mr. Ashmore.*) Is there any authority for the levying of 5 per cent. upon purchasers who delay their payments?

(*Mr. Wentzel.*) It is in the Market Law.

(*Mr. De Korte.*) Article 9 of Law 8, 1888, states that a purchaser must pay to the market master on the date of sale before 12 o'clock midday at his office any sums due upon his purchases, and in default thereof 5 per cent. for collection. The market master can also refuse to accept bids from any doubtful buyer.

(*Mr. Wentzel.*) The only other question is the legality of the Concession. The Commission may not consider that the Concession was ratified by this Volksraad resolution passed in 1880.

(*Chairman.*) That is the only thing that can give it validity.

(*Mr. Wentzel.*) But it only gives it validity by implication. The Government cannot, surely, alienate a valuable piece of ground in the most important square of the city for 99 years, at a nominal rental, without an explicity of the Volksraad.

(*Chairman.*) There is no direct resolution to the contrary.

(*Mr. Wentzel.*) Let us divide this concession into two parts. The one is a grant of market rights. The real thing is a bit of ground in the most valuable part of Pretoria, 300 feet by 200 feet. I say a lease of that sort was invalid unless the Government was authorised to grant the lease by the Volksraad, and an implied ratification is not nearly sufficient. Apart from that, I contend that, under Law 8 of 1888, the Government has no right to delegate its rights. The Government cannot lease out these rights to a concessionaire for any period; it can only carry them out under certain conditions, and the arrangement ceases as soon as a municipality is formed.

(*Mr. Loveday.*) This public square was held in trust

for the public of Pretoria, and therefore the Government had no right to lease any portion of that public square to any individual or company without the permission of the Volksraad. That ratification had to be put in the strongest and clearest terms in order to confirm what was *ab initio* invalid.

(*Mr. De Korte.*) If the Volksraad minutes are referred to, you will find that this was before the Raad.

(*Chairman.*) The Raad had these contracts actually before them. It treated them as subsisting, and also empowered the Government to establish a second market, if necessary. It may be that this action does not show the actual adoption by the Raad of the contract made by the Government; but can anything be clearer than that they saw this contract by the Government and recognised it. The utmost really in good sense you could say was that the Raad at this time was in ignorance that the Government had exceeded its rights.

Mr. J. R. Dyer.
15 Oct. 1900.

(*To Mr. De Korte.*) We must have your title deeds and the translations of the Sections of the Market Law upon which you rely.

EIGHTH DAY

GOVERNMENT BUILDINGS, PRETORIA.

Tuesday, 16*th October*, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

NETHERLANDS SOUTH AFRICAN RAILWAY CONCESSION (Continued).

(*Mr. Curlewis.*) May I mention the tariff rates of the Netherlands Railway. I hoped to be able to put statements in on this subject, but Mr. Lance, who appears for the Chamber of Commerce, was not able to obtain his statements, which he proposes to submit on behalf of that body, which statements will embody the views of all opposing parties. Mr. Hosken is expected to be here from Johannesberg to-morrow, and he is the Chairman of the Chamber of Commerce.

(*Chairman.*) Thursday morning has been set down for that matter; we have put other matters down on the list for to-morrow. There are two or three items of information which we still require from the National Bank, the Pretoria Market, and the Pretoria Entrepôt.

(*Mr. Lance.*) I appear to oppose on behalf of the Chamber of Commerce, and beg to submit the following statement:—

HATHERLEY DISTILLERY CONCESSION.

The Johannesburg Chamber of Commerce objects to this concession on the following grounds:—

(1) That, as a monopoly, it is in contravention of the Conventions of 1881 and 1884, as interfering with the free exercise of commercial rights on the part of British subjects.

(2) That it is contrary to public interests inasmuch as in its exemption from direct taxation it tends to loss of revenue on the part of the State, and to the production of cheap liquor of inferior quality, thus leading to drunkenness and debauchery amongst natives, and other evils.

Mr. W. Hosken, President of the Chamber, is prepared to give evidence in substantiation of these points.

W. F. LANCE.

Mr. HUGH CRAWFORD, sworn; and Examined.

The following statement was put in by the Witness:—

I.

On 7th of October, 1881, the Government of the South African Republic, duly authorised thereto by Resolution of the Volksraad of that Republic (*vide* Volksraad's Resolution, Article 52, bearing date the 4th of October, 1881) granted to Alois Hugho Nellmapius the sole and exclusive right for the period of 15 years, calculated from 1st of July, 1882, "To distil or manufacture spirituous liquors from all kinds of grain, potatoes, or other products, or plants growing in this country with the exception of tree-fruits and grapes."

Further, to manufacture sugar from mealies, sorghum, corn, etc., with the exception of the true sugar-cane.

(It may be here mentioned that the concession for the manufacture of sugar has lapsed.)

Mr. Nellmapius was authorised to trade and deal by wholesale only in the spirits manufactured by him. The factory for the manufacture of spirits was to be in working order by the 1st July, 1882.

The sum of £1,000 had to be deposited with the Government of the South African Republic as security for the due fulfilment of the terms of the concession, and for the rights granted under the concession an annual payment of £1,000 had to be made to the said Government.

Crawford.
16 Oct. 1900.

The Government guaranteed that Mr. Nellmapius should be subject to no other or further taxes, in respect of the rights granted him. He had the right to take partners into the concern, but would remain personally responsible for the due carrying out of the terms of the concession.

II.

On 7th June, 1882, Mr. Nellmapius ceded the above concession to a company (consisting of A. H. Nellmapius, Isaac Lewis, Barnett Lewis, and Samuel Marks) styled "De Eerste Fabrieken in de Zuid Afrikaansche Republiek, Limited."

Mr. H. Crawford.

16 Oct. 1900.

III.

On 14th July, 1883, the Government of the South African Republic (duly empowered thereto by Resolution of the Volksraad, Article 404, of 1883), granted to the said Eerste Fabrieken in de Zuid Afrikaansche Republiek, Limited, an extension of the original concession of 7th October, 1881, for a period of 15 years, on the same conditions as embodied in the concession—the above-mentioned company having undertaken to erect (without concession)—factories for "glass-blowing and coopers-works." This was done by the company. The factory for the manufacture of glass is still in existence at Hatherley, and the coopers works are also duly carried on.

IV.

On 22nd June, 1885, the Government (duly authorised and empowered thereto by virtue of Resolution of the Volksraad, Article 464, of 1885) granted to A. H. Nellmapius a concession (which may be said to replace the concession with respect to the manufacture of spirits and extension thereof described in sections I. and II.) for the period of thirty years, calculated from 1st July, 1882, and terminating on 30th June, 1912, giving him the sole and exclusive right in the South African Republic "To distil or manufacture spirituous liquors from all kinds of grain, potatoes, or other products or plants growing in this country with the exception of tree-fruits and grapes."

The other conditions of this concession are similar to those described in sections I. and II. hereof.

V.

On 23rd June, 1885, Mr. Nellmapius ceded the concession of 22nd June, 1885, to the "Eerste Fabrieken in de Zuid Afrikaansche Republiek Beperkt."

VI.

In the year 1891 the above-mentioned company went into liquidation, and all its rights to the concession described in sections I., III., and IV. hereof were ceded, transferred, and made over, with consent of the Government, to the "Eerste Fabrieken Hatherley Distillery, Limited" (the present holder) by deeds of cession bearing date 11th November, 1892).

VII.

The present holder of the concession, The Eerste Fabrieken Hatherley Distillery, Limited, is a company registered with limited liability, according to the laws of the South African Republic. Its head office is at Pretoria.

The said company (as also its predecessors in title) have at all times duly and faithfully carried out and fulfilled their obligations under the above-mentioned deeds of concession, and at the outbreak of the war the company was carrying on its business of manufacturing spirits in terms of the concession.

About four years ago a Commission of the Second Volksraad inspected the factory, works, and books of the company. The Commission reported favourably as to the carrying out by the company of the terms of the concession.

VIII.

It may be pointed out that the shareholders in the company at present holding the concession are resident in Europe and South Africa, and they have invested their money in the matter in good faith, no objection having been offered (either directly or indirectly) by H.M. Government to the concession.

The first or original concession was granted prior to the signing of the London Convention.

The distillery was established, and its operations commenced before the goldfields of either Barberton or Witwatersrand were discovered, and at a time when the country was poor, its population small, and business very limited."

1224. (*Chairman.*) You are the chairman of the company now holding the concession which was originally granted to Nellmapius on 7th October, 1881?—Yes.

1225. The concession has by various assignments been ultimately vested in your company?—Yes.

1226. Have you the authority of the Volksraad for the original grant?——

(*Mr. Rooth*, for the concessionaires.) The concession, which was granted under an article of the Volksraad, was the concession of June 22nd, 1885. I regret to say that I have not been able to find the resolution of the Volksraad, but will hand it in. The latter concession was confirmed as recently as 1898 by the Volksraad.

(*Mr. Van Hulsteyn.*) I have the various resolutions of the Volksraad dealing with this matter, but they are all in Dutch. I have also here a history of the concession which I can either hand in now, or submit them to the Commission on cross-examination.

(*Mr. Rooth.*) You will observe that the concession which we now hold is one dated June, 1885.

(*Chairman.*) That is not the concession directly to yourselves.

(*Mr. Rooth.*) No; it is the concession to Nellmapius, and that has been ceded to the company.

(*Chairman.*) And there were other concessions prior to that which are not material. What we want at present is the resolution of the Volksraad authorising this concession, and you have said that you will obtain that for us.

(*Mr. Rooth.*) Yes. It is not in the authorised edition of the local laws, but many of these resolutions are left out. I am now handing it to the Commission as it is embodied in the original Volksraad minutes. As recently as 1898, by Law 19, the Volksraad again confirmed this concession by reserving the rights of the holders of it in section 9.

1227. (*Chairman, to witness.*) What price was paid by your company to Nellmapius for the concession?—There was nothing paid to him for the concession.

1228. Did he concede it freely to you?—So far as I know, but I was not connected with the company at that time.

1229. Did he retain an interest in the company?—Yes.

1230. A large interest?—I think about one-fifth.

1231. On the 23rd June, 1885, Nellmapius ceded the concession to the Eerste Fabrikien in the South African Republic, and that company went into liquidation?—Yes, in 1891 or 1892.

1232. And its rights under the concession were ceded to you?—Yes, to the present holders.

1233. Did Nellmapius continue to have an interest in your company?—The present company, no. I think he had sold out before the company was established.

1234. Was any objection taken by the Government at any time to Nellmapius no longer remaining personally responsible for the carrying out of the terms of the concession?—No, not that I know of.

1235. Is he alive now?—No, he is dead.

1236. I see by Section 2 he has a right to take partners under the concession and remains personally responsible for the due carrying out of its terms?—Yes.

1237. And you say there was no objection offered by the Government to your taking on the sole responsibility?—There was no objection. The consent of the Government was obtained to each cession that took place.

(*Mr. Rooth.*) At this stage I hand in the last receipt granted by the Transvaal Government for £1,000 paid, being payment under the concession which the Transvaal Government received from my clients. That I think settles the question as to the Government agreeing to the concession being made over.

(*Witness.*) The registration also in the Deeds Office would prove that.

1238. (*Chairman, to witness.*) Did your company erect a distillery?—The parent company erected a portion of the works, and this company has continued to put up additions.

1239. Have you a balance-sheet?—Yes. (*Balance-sheet produced.*) I have brought with me balance-sheets for the last five years. The balance-sheet for 1899 has not yet been submitted to the directors, but I have with me a statement which has been prepared by the Secretary. (*Statement put in.*)

1240. I see the company own land, houses and buildings, according to the balance-sheet of 1898, valued at £66,000 odd. There are also agencies, buildings and houses at Barberton, Jacobsdal, Johannesburg and Klerksdorp put down at over £16,000. The machinery and plant are stated at £262,000, and concession and good-

will £116,000 odd?—Yes; that was the consideration paid to the former company—a small amount has by this time been written off; originally it was about £122,000.

1241. (*Chairman.*) A glass factory had been erected, which was also a portion of the bargain with the Government?—Yes. That was in accordance with a resolution granting an extension of the concession.

1242. An extension of the concession for what time?—An extension from 15 to 30 years.

1243. What dividends have been paid during the last five years?—In 1897-8 no dividend was paid; in 1896, 12 per cent.; in 1895, 20 per cent.

1244. I see that both in 1897 and 1898 £117,000 was put to the reserve fund?—Yes.

1245. And in 1898 no profit was made, but £10,400 was put to the reserve fund?—Yes.

1246. Can you explain that reserve fund?—Yes; that was derived chiefly from premiums on shares placed from time to time. The capital has been increased several times, and the shares were placed with the shareholders at a premium, which premium was put to reserve.

1247. How do you account for your diminished profits in 1897-1898?—Chiefly on account of the opening of the Delagoa Bay Railway in 1895. That opened the way for spirits coming in from Mozambique. Under the Treaty of Commerce with Portugal these spirits entered the country free of duty. A great many distilleries were erected in the province of Mozambique, and they were able to manufacture at a very cheap rate, so that they were in a position to compete with us successfully.

1248. What is the date of that treaty?—

(*Mr. Rooth.*) I have the treaty here in Dutch.

The Chairman required that the translation in English of the material conditions of this Treaty of Commerce be put in.

1249. What is the date of the treaty?—11th December, 1875; but it was not ratified until 1882, and it expires in 1902.

1250. In what month of 1902 does it expire?—It was ratified in October, 1882, and therefore I take it it will expire in October, 1902.

1251. And you say that all the liquor produced in Mozambique and exported by the Delagoa Bay Railway, and dispersed throughout the Republic, comes in without any duty at all?—No duty.

1252. You pay £1,000 a year to the Government, and you also pay no duty, so that, as you say, you are in a rather worse position than Portuguese manufacturers?—Certainly.

1253. As a fact, the Portuguese stuff, with its advantages of duty free, have knocked down your prices?—Yes.

1254. (*Mr. Ashmore.*) And also diminished the sales?—Yes. For the information of the Commission I can give you figures here showing the imports according to the Government *Gazette* as published from time to time, also showing the amount of spirits imported during the years 1895-8, inclusive of the sales of the Hatherley Distillery during these years.

RETURN of Consumption of Spirits in the Transvaal.

Period.	Imported from			
	South Africa.	Abroad (Oversea).	Total Imported.	Hatherley Sales.
	Gallons.	*Gallons.*	*Gallons.*	*Gallons.*
1893 - -	163,864	292,940	456,804	272,616
1894 - -	193,278	305,098	498,376	316,046
1895 - -	401,820	397,760	799,580	386,281
1896 - -	445,222	508,586	953,808	298,130
1897 - -	271,840	505,457	777,297	63,191
1898 - -	209,458	444,390	653,848	153,594
1899 - -				86,998

(*Witness.*) We felt the competition severely in 1897, but there was an improvement in 1898.

1255. What policy did you pursue in order to secure the improvement?—We entered into competition and found that we were cutting one another's throats, so we raised the prices a little to our advantage.

1256. And what about 1899?—Being the year of the war that does not count, and we have no statistics.

1257. (*Mr. Ashmore.*) How do you account for the imports of liquor from over sea having increased, seeing that the duty on that remains the same?—I cannot account for that. I do not know.

1258. (*Chairman.*) Some people would pay for the dearer whiskey?—The population has been increasing. Industries have tended to develop the country, and trade has been extending in all directions.

1259. The fact is that there are more people now in the country who are willing to pay for an expensive whiskey than for your whiskey which is manufactured on the spot. Has that been a fact?—Possibly.

1260. Do you produce your liquor entirely from materials grown in the country?—Yes, Kaffir corn, barley, rye, and wheat.

1261. Is there no connection between you and the retail sellers?—None whatever.

1262. (*Mr. Ashmore.*) You sell your stuff wholesale to the retail seller?—Yes.

1263. (*Chairman.*) You have no connection whatever with the retail dealer?—No, beyond the ordinary trade facilities which we grant, such as selling on credit at short dates, etc.

1264. There is no such thing as "tied" houses in connection with your business?—No, we do not go in for the English system of supporting houses. We have no interest whatever in any property or house selling liquor retail, and no relations with them other than the purely commercial relation between buyer and seller. We have our agents for selling wholesale only to the dealers. We have a special right to sell per case or hogshead without a licence, but we have also taken out licences so that we should not be hampered in our dealings.

1265. (*Mr. Ashmore.*) Do you sell, say to the people of Johannesburg, without a licence in smaller quantities than a hogshead or a case?—Yes, as wholesale dealers; but at the factory we adhere strictly to the concession.

1266. Then there are no restrictions in regard to coloured people?—Yes, that trade was altogether prohibited in 1896, and it made a great difference.

1267. When you got your concession there was no restriction of the sale to coloured persons?—There were restrictions, but not to the same extent.

1268. In fact, the law has been altered to your detriment?—Yes.

1269. (*Chairman.*) Is any supervision exercised by the Government upon your sales to the retail dealers, for instance, before you send out any liquor in any form from your distillery, do you have to give any notice to the Government, or receive any permit?—No, no notice of any sort is required to be given to the Government. We have been perfectly unhampered in every way in that respect.

1270. Once you have got the stuff out of your distillery, and the retailer begins to sell it, his sale of liquor is not your affair, but his?—Quite so.

1271. (*Mr. Ashmore.*) Do you sell much by wholesale to persons other than licensed retail dealers?—No, I do not think we have ever sold any. We do not sell retail.

1272. If I sent down to your distillery and bought a barrel of whiskey, I suppose you would complete the transaction?—Oh, yes, I would sell it, but we do not do much of that business.

1273. You consider your concession entitles you for this period of years to a total exemption from taxation as regards your manufacture?—Yes, so long as we pay our thousand pounds per annum to the Government.

1274. You do not claim any other exemption except the exemption from taxation?—Yes, we are free from paying the licences if we wish to adhere to the concession.

1275. (*Mr. Ashmore.*) When the Government restricted your sales to natives, did you make any claim on that account against them on the ground that the concession was impaired in value?—We made no claim, but made certain representations, and negotiations were going on when the political troubles commenced. We let them know that we had a grievance.

Mr. H. Crawford.
16 Oct. 1900.

1276. As a matter of fact, the retail dealers pay heavy licences?—I think the amount is about £100 per annum, but it has been varied pretty often.

1277. Liquor imported over sea pays import duty?—Yes.

1278. How much?—There are different rates for different qualities.

1279. Well, what is the rate upon the ordinary sort of spirit that competes with you?—6s. per gallon.

1280. (*Mr. Loveday.*) You are referring to the Colonial manufactures such as Cape brandy?—Yes, wine is at a nominal rate so long as it is kept under a certain strength. The regulations are rather lengthy, and I do not remember them all.

1281. If the duties were removed, you would not be able to exist?—It would cripple us still further, but I do not say we would not be able to exist.

1282. How do you check the grain which you consume? How do you know it does not come from outside the Transvaal?—We take a declaration from the parties from whom we buy. We act in this matter as carefully as is possible.

1283. And the Free State grain is also excluded?—Since the Excise Law was passed in this country some few years back the Free State has been excluded. We contend that the Free State should not be excluded, and they do not dispute the matter. They simply enforce their excise law.

1284. It means that grain coming from the Free State was to be treated as grain coming from any other country?—So long as we could get sufficient grain in the Transvaal we did not trouble very much, and did not represent very strongly that our rights were being interfered with. Any grain brought from the outside must now pay a rate of 6s. Before the Excise Law was passed we used to buy very freely from the Free State and elsewhere. We did not attempt to make any difference between the Transvaal and the Free State.

1285. (*Mr. Ashmore.*) If you started on equal terms with the Cape distilleries, would you be able to compete with them? You have the advantage of 6s. per gallon, and, except in so far as you are handicapped by having to compete with the distilleries of Lourenco Marques, you are free?—Yes.

1286. Supposing 6s. per gallon was put on all round upon yours as well as the distilleries in other countries, could you compete on equal terms with Lourenco Marques and the Cape?—Six shillings all round would make little or no difference.

1287. How about the Cape? Could the Cape cut you out altogether if you had to meet them on equal terms?—Our profits would be seriously impaired.

1288. At what price do you sell your brandy, which I understand is more or less the same kind of stuff as Cape brandy?—The price varies according to the market. As a rule, it has been standing at about 9s. a gallon.

1289. And what does the Cape brandy sell at?—11s. or 12s. per gallon, with 6s. duty upon it. Of course, it varies also.

1290. What do they sell this Portuguese stuff at?—That has been selling down to 6s., and even in some cases 5s.

1291. You have no export beyond the limits of the country?—No.

1292. Can you tell us what your annual production in gallons is?—I have given the sales in my returns. I have not brought the production with me. The annual sales would be about equal to the annual production.

1293. Could you increase that quantity if necessary?—Yes; the capacity of the distillery is much above its present production.

1294. You manufacture whiskey. Is it good to drink?—I must leave that to the public. There is a good deal of prejudice against it, but when we get free of that prejudice I think a good many people are obliged to confess that it is worth drinking.

1295. I observe that under Assets you show Johannesberg and other agencies £15,000; is that the value of property or stock in hand?—The value of the property and stands. They are worth much more than that in normal times, and we have only put them in at cost price.

1296. (*Mr. Loveday.*) You bought your property in the old days?—Yes; we bought it for a mere trifle.

1297. And they will be worth four or five times as much as they originally cost?—More than that even.

1298. (*Mr. Ashmore.*) You have here an item, "Due by agencies." I suppose that is the sales to retailers on which you have given credit?—Yes.

1299. With regard to your supplies of grain, can you get sufficient without having to buy outside of the Transvaal?—Yes; as a rule.

1300. Does not the duty affect the price?—Not much.

1301. What is this item of £60,000 investments?—That is an interest we have acquired in an outside concern.

1302. A distillery, I suppose?—Yes; with your permission, I should like to refer to the item, "Goodwill." On the opposite side of the balance-sheet we have a reserve fund of undivided profits, being an amount in excess of what the goodwill is standing at.

1303. (*Mr. Rooth.*) The reserve fund of the company is mainly made up of premiums on shares in the company which have been sold?—Yes.

1304. This concession is granted on and in respect of the original concession granted in 1881?—Yes.

1305. At that time the country was very poor. It was a small concern then, prior to the discovery of the Witwatersrand Goldfields?—Yes.

1306. As far as you are aware, had her Majesty's Government ever raised any objection to this concession, or to the former ones?—Not that I know of.

1307. The terms of the concession, have they always been carried out by your company?—Yes.

1308. I see from the statement you handed in that the importation for the years 1893-1898 are about 4,100,000 gallons odd, as against 1,500,000 gallons odd of liquor manufactured at Hatherley?—Yes.

1309. The Volksraad appointed a Commission four years ago to inspect that factory?—Yes.

1310. And did they inspect it?—Yes; and the report was favourable.

Cross-examined by Mr. Van Hulsteyn.

1311. The concession was originally granted in 1881 under certain Volksraad resolutions, Article 52?—Yes.

1312. You rely on three Volksraad resolutions?—Yes.

1313. The first Volksraad resolution, Article 52, was really a general authority of the Raad to grant concessions and monopolies. Can you tell me whether the Volksraad ever approved of this particular Concession to Nellmapius under this Article 52?——

(*Mr. Rooth.*) That is more a matter for legal argument.

(*Mr. Van Hulsteyn.*) I am simply asking as to a fact.

(*Witness.*) I cannot say whether it was specially approved of.

(*Mr. Van Hulsteyn.*) Might I ask you to find out, and put it before the Commission?

(*Chairman.*) I understand Mr. Rooth has undertaken to show all these resolutions.

(*Mr. Van Hulsteyn.*) I am prepared to show that this concession is not referred to anywhere.

(*Chairman.*) He has undertaken to give us all the resolutions, and if that resolution approving of the concession is not forthcoming, then we shall know how to act.

(*Mr. Rooth.*) I rely on the concession of 1885. If my friend will look at Section 9, he will see that the Volksraad expressly reserves the right of the holders of the concession.

(*Mr. Van Hulsteyn.*) The concession of 1885 distinctly states in the preamble that it is granted by virtue of these three particular Volksraad resolutions.

(*Mr. Rooth.*) In 1895 the Volksraad appointed a Commission to inspect the factory, and reported favourably upon it.

(*Chairman.*) Let us have one thing at a time. We must have the resolutions dealing first of all with the concession of 1885.

(*Resolutions handed in by Mr. Van Hulsteyn.*)

(*Chairman*, to Mr. Van Hulsteyn.) And you say that these resolutions demand that they should be subsequently approved of by the Volksraad?

(*Mr. Van Hulsteyn.*) Yes; I would ask the Commission to request the company to produce evidence proving that the Raad actually did approve of the concession at that time.

(*Mr. Rooth.*) I will find approval of the concession of 1881, and I hope we will be able to satisfy the Commission absolutely on this point.

1314. (*Mr. Van Hulsteyn*, to Witness.) With regard to the next Volksraad resolution mentioned in this concession of the 21st June, 1883, Article 404, that is a resolution by virtue of which the concession was extended another fifteen years and the consideration which the company offered for getting that extension of time was an undertaking to establish glass factories and cooperage factories?—Yes.

1315. Have you ever done anything in connection with that glass factory?—Oh, yes, we have made a very considerable start.

1316. Does that glass factory exist to-day?—If you look at the balance-sheet you will see it stands at nearly £50,000.

1317. When did you start it?—About six years ago.

1318. That was about the time when this resolution was passed?—No, long since that resolution. The resolution was passed in 1883.

1319. You started about that time?—No, about five or six years ago.

1320. Are you still producing any glassware?—We closed down by order of the Military Governor.

1321. What was the output of that factory?—The secretary will be able to tell you that. It was very large.

1322. It was not finally shut down previous to the occupation?—No, we were working during the war. We worked up to December last, and for some time after.

1323. What sort of glassware did you manufacture?—All sorts of bottles.

1324. Principally bottles for your own distillery?—Yes, and also for sale.

1325. Did you sell a large quantity?—Yes.

1326. What sort of bottles are they—soda water, lemonade bottles, and for all sorts of liquor?—Yes.

1327. With regard to the cooperage, did you manufacture all your own casks?—Not quite, but nearly all. I cannot say what proportion we manufacture and what number we have to purchase.

1328. You are not manufacturing casks which you sell to the public?—No, we have not been asked to do any general cooperage work.

1329. Do you know if your company has played any political part?—Not that I know of.

1330. I believe that was left to Mr. Marks?—I cannot say.

1331. Has your company spent any money in any way at the request of the Government, other than purely for the company's own purposes?—No.

1332. Are you quite certain of that?—As far as my knowledge goes.

(*Mr. Van Hulsteyn.*) I am referring to something I am aware of, I am not asking in the dark.

(*Witness.*) I do not know of anything.

(*Mr. Rooth.*) If Mr. Van Hulsteyn has knowledge of a certain fact in his instructions, it is his duty to put the question directly.

(*Mr. Van Hulsteyn.*) I want to know if this witness is aware of money having been spent for other purposes besides that of the distillery.

(*Witness.*) I am not aware of any such expenditure.

Cross-examined by Mr. Curlewis.

1333. With regard to the Mozambique factories, did you acquire any interest in them?—Yes, we have an interest in one in Lourenco Marques.

1334. Is that the largest one?—I cannot say.

1335. Have you any understanding with the others with regard to prices?—None whatever.

1336. Then how do you regulate the prices?—We had an understanding at one time.

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1337. Has that lapsed?—Yes, and the Compagnie Française is the only one in which we have an interest.

1338. With regard to the decrease of sales, you attribute it to the competition?—Chiefly.

1339. Was it not rather due to the total prohibition of the sale of strong drink to the natives which came into force in this country?—That also affected it.

1340. The importations in 1895 were 799,000 gallons, and in 1896 they were 953,000 gallons?—That is in respect of the white population.

1341. (*Mr. Curlewis.*) That is for the whole population. The customers for your class of goods are not exactly the same as the customers for the imported liquor. Now, from South Africa the imports into the Transvaal in 1895 were 401,000 gallons and in 1896 445,000 gallons, so that, notwithstanding the resolution of 1896 to which you have referred, the imports have increased?—But, of course, total prohibition only applied to natives.

1342. But the goods imported are for the white population, are they not?—That is not so. The importations are for both classes. I quite admit that total prohibition as passed by the Raad did not have the desired effect, because there was a good deal of the illicit selling going on. It was not so much the concession itself. If total prohibition had been properly administered these sales illicitly to the natives would have been minimised. This illegal traffic only arose in 1896, and it was a very big trade.

1343. With regard to the local products, such as grain, etc., what steps do the Government desire you to take to see that what was used was really produced in the country?—There was no request from the Government. We took measures for our own protection.

1344. What were these measures?—We made the party who sold make a declaration that the produce was grown in the Transvaal.

1345. Was it simply a declaration?—We got a declaration from the field-cornet or landdrost.

1346. Did you never buy from any of the other States or from the Free State?—No, we refused to buy it from the time when the Excise Law was passed.

1347. And you say that Excise Law applied to liquor made from Free State grain as well?—Certainly.

1348. I heard you state in reply to Mr. Rooth that these concessions were granted according to the law, and that the conditions had been complied with. Can you state in what manner this concession has been a blessing to the public?—I did not express that.

1349. Do you really consider this to be a benefit to the community?

(*Mr. Rooth.*) Is that a fair question?

(*Chairman.*) It is really for us to decide that point.

Cross-examined by Mr. Lance.

1350. You have referred to the large quantity of imported liquor for a certain period of years being considerably in excess of what you have manufactured. Is it because what is imported is a better class of liquor?—That is a matter of choice for the consumer.

1351. This company is not subject to taxation, and it produces a cheaper kind of liquor which is not only a loss to the revenue, but is actually injurious to the community. I want to get at the fact that the liquor they produce is an inferior article?—When the law was altered with regard to total prohibition we catered for the highest classes. Before that we did not compete so much for a share of the higher-class trade, but that trade is now increasing.

1352. Supposing you were subject to taxation, you would find it to your interest to compete for the higher class trade?—We would compete for both, as we do now.

1353. I understand you do not compete now?—We sell all we can in every way we know.

1354. But if a tax were levied on you as well as on other liquors it would be more to your interest to compete for the higher class trade rather than the lower class?—That would depend on the amount of the tax. Seeing that we have prohibition, we would have no choice.

1355. The absence of taxation tends to the production

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of a cheaper class of stuff?—I am not prepared to admit that.

1356. (*Mr. Ashmore.*) You classify your spirits under two heads—spirits in stock and whisky?—Yes.

1357. Spirits in stock are the inferior kind?—No, we catered for different classes of brandy, as well as gin and other things. We make a distinction between whisky and all other kinds of spirits.

1358. Is whisky the class of spirit which is sold to the natives?—No, that is sold to the white people.

1359. (*Mr. Loveday.*) You say the higher class trade is increasing. Is that not owing to the present circumstances of the country and to the large number of troops?—I am not referring to 1899 or since the war commenced. If you will refer to the report you will find that the sales were increasing before that period.

(*Mr. Loveday.*) That is previous to the war. Of course, one can easily understand the increase at the present time.

(*Witness.*) And that shows the amount of prejudice that existed. When people cannot get anything else they are quite satisfied with Hatherley whisky.

SAMUEL MARKS, called; and Examined.

Mr. S. Marks.

1360. (*Mr. Van Hulsteyn.*) During the sitting of this Commission we have heard that amongst other concessionaries the railway company has been partly engaged in political doings. It is merely a matter of curiosity. Will you tell me if your company or any of its directors have either at the interests of the Government or at their own interests dispersed any moneys in any connection with political propaganda of the Transvaal Government or in the Cape Colony?—None whatever, except that I sent a doctor and an ambulance wagon at my own private expense. When it did not remain in the field I fixed the ambulance at Waterval Onder, where the doctor looked after the prisoners.

1361. During the examination of Mr. Kretschmar we have heard of Mr. Hargrove, and one or two other incidents of the same kind. Did you ever come across Mr. Hargrove?—Yes, I saw him.

1362. Did you have anything to do with him?—Not as a business man.

1363. He did not ask you for any money?—He wanted to start a newspaper here, but I told him it was out of my line.

1364. You gave him nothing?—No.

(*Mr. Rooth.*) I wish to point out that I think it is unfair to put questions of this sort. Mr. Van Hulsteyn said he had certain facts before him which he would prove by other witnesses, and now he has said that he is putting this question merely out of curiosity. It is not fair to put any witness into the witness-box and ask questions merely out of curiosity.

(*Mr. Van Hulsteyn*) I think I am quite entitled to ask the witness what the company has been doing. The witness is intimately associated with the company.

(*Chairman.*) It is a question of public interest. It does become relevant to know what the immediate policy of the company is in relation to the war. That is a question which we cannot exclude. The question has been asked, and Mr. Marks has negatived it.

(*Mr. Rooth.*) I challenge Mr. Van Hulsteyn to produce any fact bearing upon this matter. He said he had certain information which he would produce.

(*Mr. Van Hulsteyn.*) I said I had certain facts, and so I have. I think it is made pretty clear that all these concessionaires played a great political part, and I think this Commission should know of it.

(*Chairman.*) On the question of public interest this topic is not irrelevant; however, it has been answered, and we will not continue this discussion.

(*Mr. Rooth.*) I shall not object further, because I was certain what the answer would be.

(*Mr. Crawford.*) May I say one word with reference to what Mr. Van Hulsteyn has said?

(*Chairman.*) I should not if I were you.

(*Mr. Crawford.*) Thank you; I would wish to give a flat denial to the assertion that the company gave Mr. Hargrove anything; that I can state emphatically.

THE JOHANNESBURG ENTREPOT, OR BONDED WAREHOUSE CONCESSION.

Mr. C. T. Thompson on behalf of the Concessionaires.

Mr. Thompson said:—This is a contract which was entered into between the Government of the South African Republic originally with Mr. C. H. Holbaum and was ceded by him to the Government Johannesburg Entrepôt, Limited. The documents and the title were filed in Cape Town, and the position is shortly this: According to the Customs Act for 1894 it is provided with regard to goods not immediately cleared, that the Government may either establish an entrepôt of their own, or they may enter into a contract with any person to establish such an entrepôt, and to grant facilities for the purpose of providing importers with proper facilities when they have not their own bonding stores as set forth under the law. It is provided that goods may be deposited in the Government entrepôt, and a charge made not exceeding 1½d. per 100lbs. per day for such storage. That is the charge with regard to the Government entrepôt, but with regard to private entrepôts there is a charge made of 5 per cent. on account of Customs duty. The merchants are allowed to keep their goods in their private bonding stores for six months, and in consideration of this delay there is a charge made of 5 per cent. on the duty payable. That is because of the delay in payment, and also in view of the fact that additional officials have to be employed for the purpose of opening the stores, which cannot be opened except in the presence of a Government Customs official. It is in order to defray these additional charges that this 5 per cent. is charged on the Customs duty.

(Contract entered into with the Government submitted to the Commission.)

C. H. HOLBAUM, called; and Examined.

Mr. C. H. Holbaum.

1365. (*Chairman.*) In 1887 it came to your notice that business might be done in this direction?—Yes.

1366. Sometimes it happened that persons would receive goods, but were not able to pay at once the Customs duty chargeable upon them?—Yes; it happened frequently that they could not pay at once, and sometimes the owner of the goods was not here. Johannesberg at that time was such a shifting place, and ox-wagons frequently arrived with goods and nobody was present to receive them.

1367. Was there any building for the purpose?—No.

1368. You became aware of the Customs law?—I have read it.

1369. And you went to the Government with a view to obtaining the agency?—Yes.

1370. You accordingly obtained the right under this contract to erect a Government entrepôt?—Yes.

1371. When does your contract terminate?—The first contract would have terminated in 1897.

1372. Was there any renewal?—In 1898 it was for five years, with the right to extend, of which right I made use, and that extends it from 5th January, 1898.

1373. Have you any extensions since then?—Yes; I found that the place was not suitable, but I could build a much larger premises which would involve considerable expense; I therefore asked the Government to extend the concession.

1374. Did you get an extension?—Yes; that was with a view to moving into another place.

1375. When you got the concession in 1888, did you erect a building yourself at that time?—Yes.

1376. At what cost?—The first building cost about £1,100 odd. Then about a year and a half later I put up another building at a cost of £1,400 or £1,500, making altogether about £3,000 invested in buildings.

1377. In 1895 you again found the building inadequate?—Yes; at the same time the railway had been built, and the station was just at the other side of the

town, which made it very inconvenient to have to send all through the town goods to be off-loaded at the Government entrepôt, therefore I had to move again to near the railway sheds. I asked the permission of the Government to extend the concession for the purpose of buying ground and building a large place on a different site.

1378. Did you dispose of the buildings you had so used for the same or other purposes?—I had not the available cash for doing all this building work myself, so we formed a company, and then this building was taken over, and we rented the old building afterwards to other people; subsequently it was sold.

1379. When was the company formed?—The company was formed in September, 1895, and registered on 8th October, 1895.

1380. And to the company you as founder transferred your contract?—Yes, I had held that contract for seven years, and I transferred the buildings and everything as a going concern; I had also obtained an extension of time for ten years from the time the new buildings could be erected.

1381. Was that extension of time in writing?—It is in the contract which has been handed in to the Commission.

1382. The date of the contract is 27th September, 1895; were the buildings finished then?—No, it is mentioned in Article 20 that the contract could be renewed for 10 years from the date of the completion of the buildings.

1383. When were they finished?—In August, 1896; therefore we have till August, 1906.

1384. Then you sold that right, with the extension to 1906, to the company?—Yes.

At this stage Mr. Thompson handed in balance sheets from the establishment of the company up to the present time.

1385. I suppose you were a director of the new company?—Yes, managing director.

1386. What did you, as founder, receive from the new company?—8,000 shares out of the 30,000 which formed the capital.

1387. And cash?—I sold some of my shares to other shareholders, and I got about £5,000 cash and 3,000 shares. I agreed, when I sold the company, to take 8,000 shares, but as I wanted some money, which I expended in building, I made over to my friends 5,000 shares, for which I got cash.

1388. After that was the land near the station purchased by the company?—Yes, to begin with, 27 stands at a cost of £7,629, and later on we bought some more stands at a cost of about £2,500, so that with the expenses the ground we bought cost about £11,000.

1389. Then the buildings erected upon that ground, what did they cost?—They cost over £12,000.

1390. You were thus enabled to work the business on a much larger scale after the buildings were finished, about August, 1896?—Yes, we were enabled to give greater facilities to the merchants.

1391. With regard to the properties bought in 1896, do you think they have depreciated in value?—I do not know. I consider they ought to be very valuable. I may tell you that we bought them in a rather dear time, and we also built rather dearly.

1392. Since then have you considered it necessary to erect even larger buildings?—In a very short time, and to expend something like £20,000 or £25,000 on storage; therefore, as the company could only run until 1906, we again asked for an extension and we got it.

1393. (*Mr. Thompson.*) At that time Mr. Holbaum had been appointed Collector of Customs?—An extension of the period was granted to us until 1921.

1394. These stands are all on long leases from the Government?—Yes, I believe they are on a 99 years lease.

1395. There was at this time an increase of the tariff from 5 to 10 per cent., and the alteration was to begin from the 1st September, 1898. On receiving notice of this, did you extend your buildings?—No, we wrote to the Government urging that this 10 per cent. would be pressing too much on business people and on the public generally, and pointed out that we would have to charge that again to the public. We had a lot of correspondence, and I also came to Pretoria with one of the directors and saw the State Secretary, who told us that the thing would be brought before the Government again; in the meantime the Collector of Customs was instructed to receive 5 per cent. only.

1396. Has this arrangement been carried out by which you could obtain an extension for 15 years?—Yes, we have yet time to carry it out. It was asked on account of the times getting better, but they got worse afterwards, and we have not been able to do anything on account of the war.

1397. (*Chairman.*) The resolution is to extend the period for 15 years on condition that the tariff should be increased. Yet the tariff was not increased?—We accepted that position, and the Government gave us an extension of time.

(*Mr. Thompson.*) The Government suspended the operation of the payment of the increased tariff, and in the meantime accepted the old rate of 5 per cent. pending a further settlement.

(*Chairman.*) At present all I have got here is document extending the time for 15 years on certain terms. These terms have not been complied with.

(*Witness.*) There is a letter written by the State Secretary to the fact that in the meantime, till there was an opportunity of settling the percentage, they should receive the 5 per cent.

1398. (*Mr. Ashmore.*) As a matter of fact, you have not extended your buildings since 1896?—No, we have not had time. It was after the latter date that the agreed upon an extension.

1399. (*Chairman.*) I see that, as in the contract of the Pretoria Entrepôt, it is provided that in case the place of collection is at any time removed, the contractor shall have no claim for compensation and the contract shall *ipso facto* lapse. I suppose the site you now occupy is one of the best sites in Johanesburg?—It is a very good site for storing goods.

1400. The buildings are well situated for warehouse purposes?—Yes.

1401. (*Mr. Ashmore.*) You did not do much warehousing except of uncustomed goods?—We did a good deal of warehousing when the war broke out. People came to us and we stored their furniture.

1402. But that is exceptional. What did you make the concession stand you at? There were £11,700 in assets, and you got £8,000 for it?—There were 5,000 promoter's shares, which made it £13,000 at first.

1403. A portion of them has been written off?—Yes.

1404. (*Mr. Thompson.*) The extension was definitely accepted by your company subject to this payment of 10 per cent.?—Yes.

1405. And the payment of the additional 5 per cent. was merely suspended pending these subsequent negotiations?—Yes.

1406. And you were not relieved in any way from your liability for the additional buildings?—We were not.

1407. (*Chairman.*) Is the acceptance by your company mentioned in any of the correspondence?—Yes. We wrote a letter to the State Secretary, the 16th November, expressing the company's thanks for the extension of time; that I should regard as an acceptance. (*Document containing acceptance of terms put in.*)

1408. Then you went on to make better terms, urging them to revert from the 10 per cent. to the 5 per cent.—Yes, we would have had to charge it to the public and the public would have objected.

1409. (*Mr. Ashmore.*) What do you charge for storage?—We charge as a rule about ½d., sometimes still less. When the parcels are small we charge the full tariff, because we have the same amount of work with a small parcel as with a large package.

1410. (*Mr. Thompson.*) It is only when you have room in your warehouse that you are allowed to store private goods?—Yes.

1411. But as a rule your warehouse is pretty full?—Up to a couple of years ago it was always fully occupied.

1412. Then your warehouse is largely used by the importing public of Johannesburg?—Yes.

1413. Are you aware of any merchants who have established their own entrepôts?—At present there are none.

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1414. There are commercial people who have dealt with you for a number of consecutive years?—Yes, for eight or ten years at a time.

1415. Have any serious complaints ever been made to you?—Not that I am aware of.

1416. Have any serious complaints ever been made Department about collecting the Customs duty?—No, there was the Customs official always in the Government Entrepôt who attended to the collection there.

1417. (*Mr. Loveday.*) Who paid him?—The Entrepôt gave him an office, but he was a Government official.

1418. The company was not entrusted with the collection of duty?—Oh, no; we only had to store goods.

1419. (*Chairman.*) There is no provision in your concession preventing the Government from starting their own entrepôt if they liked?—I consider it would be against the concession, but of course that is a legal matter.

Cross-examined by Mr. Lance.

1420. At the time you got this concession you were in the Government service?—No.

1421. When did you first enter the Government service?—Four years ago, it was not in 1892.

1422. What position did you then take?—I got the position which Mr. Cock had before, namely, that of Collector of Customs.

1423. Was that during a considerable number of years, while this concession has been running, you have held the position of Collector of Customs?—The work is the same as that which is done in what is called elsewhere Queen's warehouse.

1424. The rate you are entitled to charge is 1½d. per 100lbs, but you say you usually charge ½d.?—Yes, for large packages.

1425. Is the tariff as you charge a variable one?—Yes.

1426. You make an arrangement with the people themselves?—Yes; it all depends on the people, whether they want to store a lot of stuff. We make the tariff as low as you can, and it is fixed according to the class of goods.

1427. Is it not variable also according to the class of people?—I am sure that is not the case; the people do not make any difference.

1428. Do you know how this rate compares with the Queen's Warehouse elsewhere in Cape Colony or Natal? You say no private bonding stores have been established. Do you know why that is?—Yes; because it does not pay them.

1429. Why would it not pay them?—The import duty of 5 per cent. is too high.

1430. There is a charge of 5 per cent. on the import duty in the case of private bonding stores, and that charge is made whether the goods are there one day or six months?—Yes.

1431. Are goods usually left for anything like six months at your entrepôt?—Sometimes.

1432. Is not the ordinary period very much less?—As a rule, they do not stay there very long.

1433. So that, if goods are left for a short period only, it is not likely to pay them in the case of private stores, and therefore, with this charge of 1½d. per 100lbs. you have virtually a monopoly?—Well, yes; this is so.

1434. You say you have never known any serious complaints about your entrepôt?—No.

1435. Do you know Mr. Rolfes, of Rolfes, Nebel and Co.?—No; I think some of his goods got in there, but he did not complain to me.

1436. Do you know that he complained to the Government?—I cannot say he did.

1437. Do you know the Chamber of Commerce has often discussed this matter?—Yes; but they had no special complaints; it was the spirit of the thing. I know they have spoken about it in the Chamber of Commerce.

1438. Do you know that they approached the Government on the matter?—I think they did, yes.

1439. What was the date of this last extension which you got?—September, 1898.

1440. Did you know that at that time the Chamber of Commerce interviewed the Government on the subject?—I know they interviewed the Government on some points of the Customs Law. No complaints were brought to my notice.

1441. (*Mr. Lance.*) It was common practice to receive goods from the railway officials?—The practice was to pay duty within a short time of the arrival of the goods.

1442. And if it was not paid, the Netherlands Railway Company handed over the goods to you?—Yes.

1443. Were not the goods handed over to you by the railway after three days? Were there not very frequent cases of complaints by merchants that the railway sent goods to you when they should not have done so?—I cannot say.

1444. Were there not a good many mistakes made in the railway?—There was a given time within which the duty might be paid, and after that period had expired, the Netherlands Railway Company sent over the goods to the entrepôt. That is frequently done, I daresay.

1445. (*Mr. Thompson.*) Is it not the case that the duty must be paid immediately?—Sometimes a mistake would happen, and the railway company would send us goods on which the duty had been already paid. That happened a few times.

1446. (*Mr. Lance.*) Once upon a time it happened a little too often, and on behalf of the Chamber of Commerce I told them that we would hold them answerable for any expenses involved in such mistakes. (*To witness.*) The Netherlands officials were very good friends of yours?—I beg your pardon; we were always having quarrels. They wanted to store goods themselves, and I had to see the lawyers about it, and send them many letters.

1447. Do you know of any instance in which this kind of work is deputed to private individuals by any Government outside the Transvaal?—No; I cannot say I do.

1448. (*Chairman.*) You were the original concessionnaire?—Yes.

1449. This right was granted to you for nothing?—Yes; we had not to pay a single penny to anybody.

1450. What is it worth to this company now?—You will understand that during the latter two years things have gone very much back in this country.

1451. (*Chairman.*) Taking into account the normal times, did you make 10 per cent.?—In 1897 we paid 10 per cent. on the capital; in 1898 we paid 12½ per cent., and in 1899 we paid 5 per cent.

1542. (*Mr. Ashmore.*) In 1898 you gained almost exactly £5,000 on a capital of £30,000, or 16 per cent.?——

(*Mr. Thompson.*) A large amount had to be spent on buildings, etc.; that is the new property at the railway station.

(*Witness.*) I did the work for seven years, and gave all my time to it, besides which we had four men continually in the place, which accounts for the large expenditure to some extent.

1453. (*Chairman.*) As Collector of Customs you knew about the movements in favour of a customs union?—Yes; I heard about that.

1454. What did you hear about it?—I cannot tell you.

1455. Was it before this company was formed?—Yes; I think so.

1456. There is a special provision in the concession for the possibility that the Customs might no longer be received in Johannesburg; did you run the risk of that?—We thought it would not be likely, and so we risked it.

Mr. Lance put in the following objections to this concession:—

The Johannesburg Chamber of Commerce objects to this concession as being contrary to public interests for the following reasons:—

(1.) It deputes to private individuals for profit a service which should fall on the Government.

(2.) It is exempt from charges which would fall on private bonding warehouses and thus, in being practically prohibitive of these, is restrictive of trade.

(3.) In practical working it has been found liable to grave abuse in the interests of Customs officials in it, and the ready facilities it has afforded to Netherlands Railway officials of hampering individual merchants.

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Mr. W. Hosken, President of the Chamber, will be prepared to give evidence in substantiation of these points, and of a promise on the part of the late Government, prior to the recent renewal of this concession, that it should not be renewed.

JOHANNESBURG MARKET CONCESSION.

Mr. De Korte, on behalf of the concessionnaires, said: This is a similar agreement to the Pretoria Market Concession which was before the Commission yesterday. I had not got a full report of what took place at the confirmation by the Volksraad in 1890, but since then I have looked up the minutes of the Volksraad. This contract was entered into in October, 1889, and was confirmed by the Volksraad in 1890. I have a translation of what took place, from which you will see that these contracts were duly confirmed by the Raad.

(*Translation put in.*)

I submit that the title to the concession is practically clear. The Government has ceded all its rights to the Municipality of Johannesburg, and the Municipality has derived the benefit from this market which has been established to meet the requirements of the community. The Government right to 1 per cent. which they were receiving is now enjoyed by the Municipality.

(*Mr. Milligan.*) I have been asked to appear on behalf of the Municipality of Johannesburg. With regard to this 1 per cent., that is purely by the grace of the Government; there is no law on the subject.

JOHN MUNROE, called; and Examined.

Mr. J. Munroe.

Puts in statement as follows:—

This concession is held by the Johannesburg Market Concession and Buildings Company, Limited, and has the rights enumerated in the agreement dated 10th October, 1889.

The capital of the company is the sum of £135,000 in shares of £1 sterling each, of which capital 8,500 shares are still in reserve and unissued.

In addition to the capital there was a debenture issue of £25,000, of which £15,000 is still outstanding, and as security for which the concession has been mortgaged to the trustees for the debenture holders.

A sum of more than £40,000 has been expended in erecting and equipping the market buildings contemplated in the agreement, which were duly completed within the time stipulated.

The benefits derived by the company are the same as those enjoyed by all markets in the Transvaal, namely, the right to charge a commission of two and a half per cent. on all sales effected through its agency, out of which charge one per cent. of the gross commission earned has to be paid to the Government which has ceded its right to the municipality of Johannesburg, whilst the company has to pay all the costs of conducting the market out of the remaining one and a half per cent. The company has in addition to pay an annual rental of £750 for the area occupied by the Market Buildings, the Government having the right to the buildings at the expiry of the term stipulated in the agreement.

A further sum of £4,000 odd was spent in purchasing the weighbridge concession and property.

The present shareholders, with few exceptions, acquired their interest in the company by purchase in the open market, and the majority of the shares are held by trust and investment companies.

1457. (*Chairman.*) What is the area of ground which you get under your concession?—160 square roods, 96 square feet.

1458. That is, I think, smaller than the Pretoria area. Have you your balance sheets?—I have a few of them prior to the outbreak of hostilities. All the records were placed in safe custody at the Raad Safe Deposit, but that institution has not yet opened its doors; however, I have the balance sheets from 1893 to 1897 during the period I have been a director.

1459. You state that a sum of more than £40,000 has been expended on the buildings, etc., connected with this concession?—Yes, up to September, 1884, £40,000 was expended. The Government resolved on our representation to reduce the amount we had to spend on the building from £50,000 to £30,000. We decided that it was not convenient to have a third storey, and therefore the reduction.

1460. In the same way as Pretoria I observe that you have practically the best site in Johannesburg, which has been granted to you for nothing?—The Market Buildings are in the centre of the square, and the shops are principally let for the convenient sale of those things which country people most require.

1461. The property in the immediate vicinity has no doubt very much appreciated in value?—Yes, no doubt that is the case before the war.

1462. And do you think that the value of the Market Buildings has increased in proportion?—Certainly; we put up a very good building in lieu of the iron shanties which existed before the company was formed.

1463. There is no premium paid for this beyond a grant of £750 per annum?—No.

1464. (*Mr. Loveday.*) The capital of the company is 135,000 shares. You say here that in addition to the capital debentures were issued to the amount of £25,000, of which £15,000 is still outstanding. Does that mean that you have paid back £10,000?—Yes, we have redeemed 10,000 of these debenture shares. They were redeemable from 1894 at the rate of £2,580 per annum.

1465. Now this expenditure of £44,000, does that include the amount of the £25,000 received from the debenture holders?—That capital was to be subscribed. The share market went very bad, and we could not get the shares taken up. The buildings had been started, and the company therefore decided to issue debenture bonds. The cheapest rate was 10 per cent.; we now pay 10 per cent. on our debenture bonds.

1466. (*Chairman.*) Yes, but you say you expended the sum of £44,000 on the buildings and equipment, while after that £44,000 you spent also £25,000 through the raising of debentures?—Yes.

1467. The share capital was therefore reduced reall to £19,000. That was issued at par?—I cannot get a the books of the company.

1468. (*Mr. Loveday.*) You have a share capital stand ing at £135,000, and you have only expended £19,000 —(*No answer.*)

1469. (*Chairman.*) In your balance sheet for 1897 th property of the concession is put down at £151,341 leaving over £100,000 as the value of the concession which concession the company received for nothing?— may explain that although this concession was grante to the present company, it was not the first concessio held in connection with the carrying on of a market i Johannesburg. The concession was held by Stephanu Papenfus, which he sold to the present company fo 100,000 shares in such capital; their lease was for period of 50 years.

1470. (*Mr. Ashmore.*) In fact, you bought out th previous company. I notice that in the balance shee showing the earnings of the company the weighbridg was rather a "frost"?—Yes, the farmers refused to hav their wagons weighed.

1471. (*Mr. De Korte.*) What dividends have yo paid?—We have paid 55 per cent. during 11 years.

1472. (*Mr. Loveday.*) On a capital of £135,000?—O our debenture issue we paid 10 per cent.

1473. (*Mr. Ashmore.*) Your debentures will shortly be eliminated?—Yes, in 1904.

1474. (*Mr. Loveday.*) The concession is represented by 135,000 £1 shares, only £19,000 of which was expended and the £25,000 obtained from the debentures, so that the concessionaires received £116,000.

1475. (*Mr. De Korte.*) There are 8,500 shares still

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held in reserve. (*To witness.*) What were the Government receipts?—The Government received in five years by way of commission £25,264.

1476. So that the municipality are getting £5,000 a year from this concession?—More than that, because in the earlier years we did not do so much work as we have been doing later on. They get practically about £6,000 per annum, in addition to heavy assessments for rating purposes by the Sanitary Commission.

1477. The Government gets two-fifths, and you get three-fifths, and you have to pay the cost of working the market and the rent?—Yes, the Sanitary Board assesses our property at what they fancy it is worth, and their assessment is very much in excess of what it stands in our balance sheet. They charge us very excessive rates for the removal of garbage, etc.

(*Mr. Milligan.*) The position is this, the Municipality holds a court for the valuation of fixed property. Certain valuators are appointed, and they value the various property within the Municipality. The court is then held, at which tenants and owners are allowed to appear and to object to the valuations. The Town Council has authority to fix the property of the market concession for the assessment of rate. These rates are for the general purposes of the town, principally lighting and street maintenance. I may state at the outset I am somewhat in a difficulty in appearing to represent the Municipality, because the members of that body are not in Johannesburg, but are scattered all over. All the old members who knew about this concern are not available to appear before this Commission, and there are very few officials available who can give the necessary information. I was only instructed practically four days ago, as until this I was acting as Crown Prosecutor at Krugersdorp. I have seen the statement prepared by the Acting Burgomaster of Johannesburg, Major O'Meara, and this is practically all I have to go upon.

(*Witness.*) The Mining Commissioner used to examine our books and initial them against the cheque which we had to pay him. When the Municipality was formed we were instructed by the Mining Commissioner in future that the Town Treasurer was to examine our books. For years past all they did was to check the books, and the money was handed over to the Sanitary Board. The Municipality was getting the money long before the matter was actually ceded to them. We were instructed to submit our books to the Municipality direct and pay the amounts due direct to that body. In after years the revenue which in former years accrued to the Government had been year after year handed over to the Municipality.

(*Mr. Milligan*, for Major O'Meara, the Acting Burgomaster of Johannesburg.) From my point of view I have advised the Acting Burgomaster that the concession is of such a nature that with consideration to the rights of the Municipality the duties of that body may be carried out without interference with the concession; but, on the other hand, I consider that the rights exercised under this concession are to a certain extent an infringement on public rights, as the Municipality has practically no control whatsoever on the manner and method in which the market should be conducted. It is on that ground that I proceed on behalf of the Municipality against this concession.

1478. (*Mr. Milligan.*) You know that one of the clauses in your concession obliges you to keep the Whites and Blacks separate in the market buildings?—Yes, arrangements were made for doing so, and buildings were constructed with that object in view. We endeavour to carry out this obligation more on account of the Blacks than the Whites, but the Coolies insisted on going into certain places in the market buildings in order to purchase there vegetables and other produce. We attempted to carry this out, but practically found it impossible to do so.

1479. Did your company not cease to claim a monopoly of markets?—We claimed an exclusive right to the whole of the market square. I may say that the Government have established a separate market at Fordsberg on exactly similar lines, which deprived us of some amount of business, but after a little time the farmers found out that they could get better prices at the central part of the town, and, consequently, the business reverted to us. The Government appointed a market master in Fordsberg.

1480. Do you claim that the Government has not the right to establish as many markets at it pleases?—We only claim the right so far as the market square of Johannesburg is concerned.

1481. The true reading of the concession is that it is practically a lease of a portion of public ground by an arrangement with the Government; a market master is appointed jointly by the Government and the Concession Company. The concession gave the company the right to erect buildings for the sale of produce, but the Municipality contends that it is not an exclusive right, that the Government could at any time appoint as many market masters as it pleases. There is nothing in the concession which gives the Johannesberg Market Concession Company the sole right to hold markets?—We contend that the right granted to the Concession Com- in the concession which gives the Johannesburg Market buildings in Johannesburg, but if the Government chooses to appoint any other market masters under the law they are entitled to do so.

1482. (*Mr. De Korte.*) That is a legal question to be decided. When this company was formed full powers were given to this company to make other regulations. (*To Witness.*) As a general rule, the market master receives from the Government a small fixed salary and 2½ per cent.?—I do not know, but the market master receives a fixed salary from us, and his assistants are also paid by us.

1483. (*Mr. Lance.*) You claim market rights for the whole of the area of the market square?—Yes.

1484. So that it is virtually a monopoly?—We do not claim a monopoly over the market square, but the exclusive right for the market square for market purposes.

1485. Did you ever refer to the shops established at the market buildings as being for the convenience of country people?—We submitted this question to Dr. Leyds, and he agreed that we should be permitted to open stores there.

1486. But there are public-house bars there as well?—Yes. Dr. Leyds decided that we were within our right in opening these bars. There never was a conviction of any of these bars, but some interested parties got up an agitation and represented to the Government that we ought not to have these bars, and the Commission decided to recommend to the Government that they should not be allowed, but we had gone through the ordinary process; we got permission from the Government and the necessary licence for the opening of these places, and there never was a single complaint all the time they were there.

1487. Can you give us any idea of the rents charged for these bars?—The rental for a bar is usually higher than for premises of a similar size used for any other purpose.

1488. Can you recollect the rent of the corner bars?—I think one of these paid £50 monthly.

1489. It is a very lucrative business, is it not?—We always endeavour to do the best we can for our shareholders.

1490. (*Mr. Ashmore.*) In the balance-sheet for 1897 there is an amount of £15,797 commissions. Is that your 2½ per cent. on the entire sales?—The amount of commission paid to the Government was £5,739 19s. 4d.

1491. But the proportion owing to the Government is two-fifths, and you are supposed to retain three-fifths?—There is a slight discrepancy in this respect. The concession holders are entitled to charge 2½ per cent. on produce sold outside the market, but there is no stipulation as to the terms on which vegetables are sold inside. The Government get 1 per cent. on the entire commission. The Government official came and inspected our books, and said we ought not to charge 5 per cent. The question was repeatedly urged, and it was arranged that we should only charge 2½ per cent. on inside as well as outside sales, and thus we have only been charging 2½ per cent.

1492. (*Chairman.*) In Article 9 the Government reserves the right to the remaining portion of the market square. What meaning do you attach to this? Do you say that the provision with regard to the use of the Dutch language is not inserted in order to cause all the transactions over the whole of that market to be in Dutch?—The municipality has always recognised the fact that this concession gave the market company the right which would have ordinarily been held by the Market Master under the law, that is, to hold sales on the market square; but they have also held that

the Government can appoint as many Market Masters as they please outside of that square.

(*Chairman.*) But in the most definite way throughout the whole of this concession the term "market buildings" is differentiate from the term "market." There is an express reservation under Article 9, that the Government reserves the right to dispose of the remaining portion of the market square to itself. And under Article 12 the Market Buildings Company are given the control and management of the market sales as well outside as inside the market buildings.

(*Mr. Milligan.*) Not being sufficiently instructed in that matter, I am not in a position to state definitely what is the opinion held by the municipality, but the municipality recognises the fact that, while this concession exists, the company has the sole right to carry on markets inside but not anywhere else outside that square.

(*Mr. De Korte.*) The answer of the witness on that point would not affect the question.

(*Chairman.*) The control and management of the market by this company simply means the market that exists in that particular square.

(*Mr. Milligan.*) We look upon this more or less as an infringement of the public rights, in so far as it gives the market company the most valuable piece of ground in Johannesburg at a nominal rent.

(*Chairman.*) You do not contend with respect to this that it was not within the power of the Government to grant such a concession, and that the Raad has not confirmed it?

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(*Mr. Milligan.*) I hold that if the Raad has confirmed it, the concession may be in order.

(*Mr. De Korte.*) Well, it has been confirmed by implication.

(*Mr. Milligan.*) I take it that the onus rests upon the company to prove that the concession has been legally granted and is in order.

Mr. Lance, on behalf of the Chamber of Commerce of Johannesburg, put in the following statement opposing the concession:—

The Johannesburg Chamber of Commerce objects to this concession as contrary to public interests for the following reasons:—

(1) That it deputes to individuals a service and source of revenue which should belong to the municipality.

(2) That in practical working it has proved detrimental to the interests of the town and district in the practical monopoly given it in dealing with a most important section of the food supply of the town.

Mr. W. Hosken, President of the Chamber, will be prepared to give evidence in substantiation of these points. W. F. LANCE.

16th October, 1900.

JOHANNESBURG WATERWORKS CONCESSION.

(*Mr. Duxbury.*) I appear for the Zuurbekom Water Company, Limited.

(*Mr. Lance.*) I am opposing on behalf of the Chamber of Commerce of Johannesburg.

(*Mr. Milligan.*) I appear to oppose on behalf of the Johannesburg Municipality.

(*Mr. Duxbury.*) I would like to give a brief outline of the history of this concession. It appears that in the year 1894 a certain Blakeney and others approached the owners of the farm Zuurbekom, with a view to the acquisition of certain water rights and other rights on that farm. These were duly secured by Blakeney and others, and were subsequently transferred to Messrs. Barnato Brothers. There was some difficulty at first with regard to the water rights on the farm, because it appeared that in addition to the rights which he secured from the owners, Blakeney succeeded in obtaining from the Government an agreement with regard to the right to lay pipes along the main roads and in the streets of Johannesburg. This agreement, however, was so onerous in its conditions, that when he was in treaty with Barnato Brothers they refused to have anything to do with this particular agreement, on the ground that they did not see their way clear to carry out the conditions. Blakeney would not sell the water rights on the farm Zuurbekom without the other rights; he would not split the matter. Therefore he agreed to again approach the Government with a view to getting an amendment of the agreement, and, if possible, of securing better terms. Mr. Blakeney employed a Mr. Mendelssohn, and they worked together in the matter, with the result that in June, 1897, Mr. Mendelssohn succeeded in securing from the Government an agreement which I will ask your permission to read, and which was distinctly of a more favourable nature. Mr. Blakeney was then in a position to transfer his rights to the would-be purchasers.

(*Mr. Loveday.*) Mendelssohn stepped into the shoes of Blakeney?

(*Mr. Duxbury.*) He was acting as agent for Blakeney.

(*Chairman.*) Blakeney had the water rights on the farm, and Mendelssohn had the right to lay pipes, and the right to lay pipes was transferred to Blakeney?

(*Mr. Duxbury.*) Yes, and the Zuurbekom Company eventually acquired these rights, which were ultimately transferred by Blakeney to that company. Blakeney got the approval of the Government to that new contract entered into with Mendelssohn. Barnatos bought from Blakeney the whole of his rights and the company was formed with a capital of £120,000. Blakeney, for the rights acquired from him, received 31,666 shares, and for the agreement with the Government he received a cash payment of £15,000. All the rights and subsidiary rights then became vested in the Barnato Brothers, and then the company was formed. That is the position.

(*Chairman.*) The two rights before they were married were not very valuable?

(*Mr. Duxbury.*) Oh, yes, they were extremely valuable.

(*Chairman.*) But their real value was immensely increased by the junction with the right to lay water pipes in Johannesburg?

(*Mr. Duxbury.*) To this extent only, that owing to the very great necessity that existed at that time to supply Johannesburg with an adequate quantity of water, it was necessary for the Barnato Brothers, who acted as trustees for the Johannesburg Water Works Company, to do the best they could, and they acquired from the owners the right to lay pipes through Johannesburg itself, the owners having their line situated between Zuurbekom and Johannesburg. They had already the right to lay pipes in Johannesburg itself, but to obviate any delay, they secured the right to lay pipes independently of the Government.

(Agreement between Mendelssohn and Government, of 16th June, submitted to Commission, and Articles 16 and 20 referred to specially.)

(*Mr. Duxbury.*) Mendelssohn secured this right to lay pipes along the streets of Johannesburg, and for that they had to supply the Government Buildings in Johannesburg with 3,000 gallons per day free of charge. It is expressly stated here that it is not a monopoly, and at any moment rights may be given to any other company to lay pipes.

(*Chairman.*) Speaking from a business point of view, if you get the right to break up the streets and put your main through them it is not very convenient for anybody else to come there, nor is it very convenient for anybody interested in the town to grant any such additional right.

(*Mr. Duxbury.*) They were allowed to lay these pipes for a distance of 16 miles from Johannesburg.

The Johannesburg Water Company had laid their pipes before this. Had it not been for the fact that the Johannesburg Water Company were already in working order they would not have stood in the same position, but they were able to exploit this matter with the assistance of the capital of that company. They were enabled to enjoy the advantage of 130 miles of pipes already laid down by the Johannesburg Water Company by agreement with it.

(*Chairman.*) Have you not parted with your concession to the Johannesburg Water Works Company?

(*Mr. Duxbury.*) No, we have not done so, but all the shares of the Zuurbekom Company are held by the Johannesburg Water Works Company.

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(*Mr. Milligan.*) For all practical purposes these two companies are one and the same.

(*Chairman.*) The Johannesburg Water Company's pipes are used to distribute the water?

(*Mr. Milligan.*) Yes, they are practically one and the same thing.

(*Mr. Duxbury.*) The shareholders are the same, but there are certain agreements between the two companies. The two capitals are quite distinct, and the distribution of dividends is quite different.

(*Chairman.*) But so far as the public is concerned they are one and the same?

(*Mr. Duxbury.*) But so far as the law of this country is concerned they are distinct entities. The object was to acquire these rights connected with the Zuurbekom farm and so to supplement the water supply of Johannesburg.

HARRY REGINALD CALVERT, called; and Examined.

Mr. H. R. Calvert.

(Puts in statement, also notarial deed of 4th June, 1896, being a private deed between the owner of the farm, Zuurbekom, and Blakeney.)

1493. (*Mr. Loveday.*) What is the capital of the Johannesburg Water Company?—£850,000. I can give you all the information with reference to the Johannesburg Water Works, we acquired the whole of this concession.

1494. Practically, you have joined hands in supplying Johannesburg with water?—Yes. (*Balance sheets of the Johannesburg Company put in.*)

1495-6. (*Chairman.*) You are acting chairman to both companies?—I am.

(*Chairman.*) Subject to what you gentlemen may think, I consider it is clear that we should take these two concessions together. The Zuurbekom Company have got the water rights and the right to lay the pipes. They have virtually become identified with the Johannesburg Water Works Company, to whom they have sold their water rights and whose pipes they use.

(*Mr. Duxbury.*) They have not sold their water rights. There is an agreement between the two water companies whereby the Johannesburg Company pays a royalty of 6d. per 1,000 gallons, and for this purpose the two companies are entirely distinct.

(*Mr. H. T. Thompson.*) As respecting the Johannesburg Water Works Company, I think it might simplify matters if we take the two together. In December, 1887, within a few months after the establishment of Johannesburg as a township, Sir James Sivewright acquired from the then Government of the Transvaal a right in all respects similar to the one obtained at Zuurbekom, namely, the right to lay pipes through the streets of Johannesburg and suburbs for the purpose of supplying the inhabitants with water. This was a lease of the farm Doornfontein, a lease which he had obtained from the owner. Reservoirs were constructed there, and as the place increased in size, the company which had been floated increased its capital, as is shown in the statement which I will hand in, for the purpose of acquiring water rights and constructing other reservoirs. It is in the same connection that the rights to the water from Zuurbekom were ultimately leased by the Water Works Company. The town was growing so fast that it was necessary to get a very much increased supply. (*The agreement between the Government and Sivewright put in.*)

(*Chairman.*) That is a grant to lay pipes through all the streets of Johannesburg without any corresponding obligation at all for the company to supply water.

(*Mr. Thompson.*) Except that it is not probable that they would go to the expense of thousands of pounds in laying pipes without the prospect of deriving any benefit from it.

(*Chairman.*) There was no obligation to supply it; any individual or person whom this company did not choose to supply with water need not have been so supplied.

(*Mr. Thompson.*) There would have been no use in expending all this capital without some object in view, if they did so, it was open for the Municipality or other persons to get the contract to supply the town with water; as a matter of fact, the Second Volksraad had before it no less than four or five other contracts given to persons on similar lines, but the Johannesburg Water Works Company was the only one which made any attempt to do anything.

(*Chairman.*) It is astonishing that power was given to lay these pipes and yet no powers were set forth to regulate the tariff, except to the extent that the prices shall not exceed 4s. per 100 gallons, no obligation on the part of the company to supply water seems to have been imposed.

(*Mr. Thompson.*) They were only allowed to work in the streets at night-time, and any disturbances of the streets had to be satisfactorily repaired; Johannesburg at the time was merely a mining camp.

(*Mr. Milligan.*) It is a very interesting question, how it came about that the other companies were moribund at this time.

(*Mr. Thompson.*) The fact remains that amongst all these other large concessionaires, not one of them did anything. If it were not for the Johannesburg Water Works Company, Johannesburg would not be in existence to-day, because they would have no water supply.

(*Mr. Duxbury.*) The Government itself is a guarantee to the public. An obligation is distinctly laid upon the company by section 7, that a start shall be made with the work within three months, and water, within two years shall be supplied to the inhabitants.

(*Mr. Ashmore.*) Supposing I was the owner of a rising mining concern and were dependent upon this water supply, and the use of it were refused me, I have no redress, and you could practically starve me into submission.

(*Witness.*) Public opinion has a certain amount of influence.

(*Mr. Duxbury.*) You cannot avoid that section of the contract which states that there shall be no monopoly.

(*Chairman.*) What did the installation cost?

(*Return of the Johannesburg Waterworks put in.*)

1497. (*Mr. Ashmore.*) According to the balance sheet for 1898, you only had a portion of the Zuurbekom shares?—Since then we have purchased the remainder. We have actually bought 3,666 Zuurbekom shares.

1498. Can you give us the average dividends you have paid?—The profits are mentioned in my statements and other documents put in. There is also a table showing the working expenditure and dividends:—

In 1889 the dividend was		7½	per cent.
,, 1891	,,	5	,,
,, 1892	,,	5	,,
,, 1893	,,	6	,,
,, 1894	,,	6½	,,
,, 1895	,,	7½	,,
,, 1896	,,	7½	
,, 1897	,,	7½	,,
,, 1898	,,	7½	,,
,, 1899	,,	5	

Ten shillings per 1,000 gallons is charged, less 10 per cent. discount.

1499. (*Chairman.*) What is your total capacity of supply now, including Zuurbekom?—It is just under two millions per day.

1500. Can you add to that from any existing sources of supply?—With the additional plant which we have ordered, and which will involve an outlay of £56,000, we shall be able to supply under 3,000,000 a day. This plant, including pumps and pipes, is mostly lying at East London.

1501. Do you intend to reduce the rate?—If we find we can return a fair dividend to our shareholders it is our intention to reduce the rate. So far we are going to pay 7½ per cent. In this country, if we do not exceed 10 per cent., it is reasonable.

1502. (*Chairman.*) There have been in the past bitter complaints against you on account of the nature of the water supply?—Yes. You have got to take into consideration that we started supplying a town with not more than 8,000 inhabitants, which rapidly went up to 70,000, and there were naturally enormous difficulties in procuring an adequate water supply. It has been our object to bring up the supply to 5,000,000 gallons a day, as you will see we have purchased Steenkop and other farms with this purpose in view; but we have always been prevented from doing so owing to disputes arising

from riparian rights. We had therefore to go to other sources.

1503. How long have you had Zuurbekom?—About two years. The first water pumped in was in April, 1898, and the total quantity gained up to date is 577,703 gallons of water, besides an enormous quantity supplied for street watering and other purposes.

1504. And the complaints have ceased?—There have been no complaints since Zuurbekom was obtained. We have a regular complaint book, but there has been no entry in it for months and months.

1505. How far is Zuurbekom from Johannesburg?—About 16 miles. The quality of the water is undoubted. You have the analysis.

(*Last analysis of Zuurbekom water put in.*)

I am quite sure the town itself can have no objection to the present water supply.

1506. (*Mr. Milligan.*) Did your company spend any money in connection with the Vaal River scheme?—Only survey fees. We extensively surveyed the farm, and the report we got was that we could not use the water.

1507. That is a concession which has lapsed?—I do not even know whether it is a concession.

1508. You acquired in addition sources of supply from the Crocodile River, Steenkopje, and Wolverands. What did you pay for these?—I am not sure. I fancy it was £10,000 or £20,000 cash. We have purchased freehold farms.

1509. That is included in the present capital of the company?—Undoubtedly, yes.

1510. But it is lying idle?—We have been pumping water from Wolverand.

1511. Are you doing so now?—Not at the present moment.

1512. You made no great use of it?—It turned out a disappointment, but it was of great use at the time to the company, as it was the sole source of supply.

1513. Have you any knowledge of the prices paid for water in other parts of South Africa?—I have no such knowledge. I have not got a record here.

1514. Do you know any of the English or European prices?—Not from memory. Generally speaking, there is a rate levied on the houses for water, which always gives the water company the right of recovery.

1515. You do not know that Glasgow charges 4d. a thousand gallons?—I have not the slightest idea; but how many people are there in Glasgow?

(*Mr. Thompson.*) The Kimberley rates are much the same as those of Johannesburg.

(*Mr. Milligan.*) Yes, but they bring it a greater distance, and yet sell it cheaper.

(*Mr. Thompson.*) You will find that the conditions and prices in Kimberley are very much the same as those in Johannesburg.

1516. (*Mr. Milligan.*) The conditions are very different. (*To Witness.*) You remember a big agitation that went on in order to obtain another and better water supply for Johannesburg in 1893-4-5?—Do you mean the Wonderfontein scheme? Oh, yes, I remember it.

1517. Did the company at that time spend any money in connection with influencing the electors at Johannesburg?—Nothing at all.

1518. Was there no payment at that time to the Jewish congregation?—Not that I know of. What date was that?

(*Mr. Milligan.*) Just about the time of the big meeting held in the Amphitheatre. A large meeting of electors was convened to decide as to the expense of the Wonderfontein Water scheme. The Government requirements were that the ratepayers of Johannesburg should decide as to whether they would agree to this or not. I wish to know whether any payments were made to influence the electors at that meeting?

(*Mr. Thompson.*) Mr. Calvert does not know anything about that.

(*Chairman.*) When was that?

(*Mr. Milligan.*) This was a meeting held in the Amphitheatre.

1519. (*Chairman.*) (*To Witness.*) I suppose you used all the influence you could to persuade your customers that they were abundantly supplied?—Undoubtedly.

(*Mr. Milligan.*) It is common knowledge that a party of hired ruffians were specially brought to break up the meeting.

(*Mr. Thompson.*) I hope that my friend does not impute that my clients hired these ruffians.

1520. (*Mr. Milligan.*) I do not. (*To Witness.*) You have an agreement with every township giving you the right to supply water?—That is so.

1521. There is not a single township in which you have not got an agreement for the sole right to sell water?—I should hardly say that, but I believe we have the great majority of these townships.

1522. (*Chairman.*) How many townships are there?—Probably from eight to a dozen.

(*Mr. Thompson.*) That arrangement with regard to the supply of water to these outlying townships is by agreement with the owners of the soil.

(*Mr. Duxbury.*) It does not affect the concession at all.

(*Mr. Gutfillan.*) The instructions given to me were to point out to the Commission that the power given under this contract with the Government to the concessionaires may not be a monopoly, but as carried out, it becomes a monopoly. It is a monopoly granted by the Government without reference to the people who are to be supplied, and the people have no control over the quality or quantity. The people themselves who have to be supplied have no *locus standi* in carrying out any of the conditions of this concession. I am instructed to put in a protest on behalf of the Imperial military authorities and municipal authorities who are at present filling the place of a civil municipality, that this concession is against the interest of the town, and the rights given under it should not have been granted.

(*Mr. Ashmore.*) With regard to these private townships, are they really suburbs of Johannesburg? For instance, what is Park Town?

(*Mr. Gutfillan.*) Yes; this is one of the suburbs of Johannesburg, and the concessionaires have the sole right to supply them with water.

(*Mr. Thompson.*) I may explain to the Commission that at the commencement of the goldfields there was a strip of Government land, on which the Government decided to start a town. This piece of Government ground was ground owned by private individuals, and the Government gave the owners the right to sub-let their land into stands on similar lines to those on which the Government let out their land. Some of these are the proclaimed goldfields, and others are outside, where they make their own conditions as to tenancy, etc. At Park Town, for example, they have their own water supply, lighting scheme, etc. Others fall under the jurisdiction of the Johannesburg Town Council.

(*Mr. Ashmore.*) How do they obtain this power? Do they enter into an agreement with anybody?

(*Mr. Thompson.*) Formerly they were irresponsible. There was no obligation. For example, the making of streets or roads, the owner of the soil obliged his tenants to take any water supply which he arranged for.

(*Chairman.*) How many owners were there in these townships?

(*Mr. Thompson.*) As a rule, they belonged to companies or syndicates.

(*Chairman.*) Have you what is called a monopoly for supplying water in the Berea?

(*Witness.*) That was originally part of the Johannesburg Water Works asset.

1523. (*Chairman.*) Have you an agreement with the owner of the soil at the Berea to supply them in perpetuity with water, to the exclusion of anybody else?—That is so.

1524. This is practically applicable to all men in the townships?—Yes, the people all buy the land to build thereon on the conditions.

1525. The point is urged against you, that you stand in opposition to public rights by private treaties you have made with private owners, which has given you virtually the position of monopolists in the supplying of water?—Well, not of Johannesburg, but all of the suburbs.

1526. You have possession of so much power, that one can understand how difficult it would be for anyone opposing you. Do you not think, as a matter of fairness in the future, that you would do well to have

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some control over the roads, and obligations to provide a sufficient water supply?—We have that obligation at the present moment. We cannot reduce the water supply.

1527. Have you the slightest objection to that being made compulsory?—What benefit would we obtain by having it made compulsory.

1528. It is not a question of what benefit the company would derive. I am referring to the interests of the public generally. You are in the position in which you exercise practically the monopoly of the supply?—That is so.

1529. Have you any objection to come under an obligation, in consideration of that position, to supply, and to supply upon reasonable terms?—That is a matter for the shareholders to consider. It is rather a difficult position to put me in. I am only one of the Board of Directors, and I would rather not answer. As a matter of fact, there are 6,000 shareholders to be considered.

1530. (*Mr. Ashmore.*) With whom do you agree in the case of one of these outside townships—take the Berea, for example?—We agree with the proprietors of the township, the owners of the soil.

(*Mr. Thompson.*) The difficulty is this: Although under the contract there is an obligation to supply water, yet the Waterworks Company have no recourse against any particular plot of land or house, but only the inhabitant. The first clause shows the right is granted in order to supply the inhabitants with water. If they do not carry out that obligation to supply it, it is then for the Government to have its remedy.

1531. (*Mr. Lance.*) Take the case of Jeppestown. There the owner of the soil leases certain stands, but he retains the freehold right in all the stands. (*To Witness.*) Is not that the case in all the townships?—The municipality have control in some cases.

1532. Take your own township of Doornfontein and the Berea. You let the stands on long leases, and retain the freehold and the ownership of all the streets. As owners of the freehold, you contract with the Waterworks Company for the sole supply of water, without consulting the tenants at all. Now, can you give us any idea what proportion the town of Johannesburg bears to the whole area?—I do not know what proportion Johannesburg proper may contain.

1533. Should we be far off in saying that Johannesburg proper is not more than one-fifth of the total?—I cannot say definitely as to that.

1534. Practically, you get all the water at present from Zuurbekom?—Yes.

1535. And where does the Zuurbekom Company deliver it?—Into the reservoir at Paarlshoop.

1536. And you pay the Zuurbekom Company sixpence, and charge the public ten shillings?—Yes, this is as it stands in the ground before it is lifted by means of the pumps. But the Waterworks Company pumps it into Paarlshoop.

1537. (*Mr. Loveday.*) The Zuurbekom Company have no waterworks expenses at all?—None whatever.

(Mr. Stewart's report of the Zuurbekom water supply put in.)

(*Chairman.*) Is there any authority from the Raad, in the first place, for this grant of the 16th June, 1897?

(*Mr. Duxbury.*) There is a resolution of the Executive Council.

(*Chairman.*) There is nothing from the Raad. Assuming these roads to be, as they are termed, public roads, what right has the Government, without the authority of the Raad, to grant easements?

(*Mr. Duxbury.*) The Government is empowered to enter into contracts with owners of property, so long as there is no perpetual easement or alienation, or expropriation.

The law on the subject is that the Government have no right to enter into any agreement, without the consent or sanction of the Raad, for the alienation of property. I have tried to trace a further resolution, but have not been able to do so. It was not really necessary to have a Volksraad resolution on the subject.

(*Mr. Milligan.*) I submit that according to the law of the land a perpetual lease is alienation, which requires a Volksraad resolution.

(*Chairman.*) Have you any authority for that?

(*Mr. Milligan.*) I think the authority for the right of the Executive to loan out public property has got to be proved by those to whom the alienation has been made. The Volksraad had the supreme power in this land.

(*Mr. Duxbury.*) There is a body known as the Government.

(*Mr. Milligan.*) In the McCorkindale and other cases which came before the High Court, it is held that the Volksraad is the supreme power.

(*Chairman.*) Nobody has ever referred me to any passage in the law or any case to the effect that the Government requires the authority of the Raad before it can alienate.

(*Mr. Milligan.*) The Government is merely the executive, and is supposed to carry out the commands, or resolutions and laws passed by the Volksraad. It is not an independent body. The Grondwet lays down what the functions of the other bodies are. There is certainly no distinct authority in our laws, giving the executive power to alienate public ground without the consent of the Volksraad.

(*Chairman.*) You have to go a step further. It is an easement or right to lay pipes along the public roads, subject to termination from time to time.

(*Mr. Milligan.*) There is sufficient authority under the Roman Dutch law to prove that the lease is a real right.

Mr. Lance submitted the following statement with regard to this concession:—

The Johannesburg Chamber of Commerce objects to this concession on the ground that it is contrary to public interests, for the following reasons:

(1) That the right of supplying water to a town should be in the hands of the municipality.

(2) That in practical working it has become a monopoly, and in the high rates charged for water has pressed unduly on the public.

Mr. W. Hosken, President of the Chamber, is prepared to give evidence in substantiation of these points.

16th October, 1900. W. F. LANCE.

(*Mr. Thompson.*) With regard to Mr. Lance's statement that this concession is prejudicial to the interests of the inhabitants, I may point out that there are several large water supplies at some distance from Johannesburg, and it was proposed that these should be acquired by the town. A meeting of townspeople was convened for the purpose of considering a proposal to this effect, and it was rejected.

(*Mr. Lance.*) To which Mr. Gilfillan referred.

NINTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Wednesday, 17th October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

THE NATIONAL BANK CONCESSION (Continued).

THOMPSON HENDERSON, recalled; and Examined.

Mr. T. Henderson.

17 Oct. 1900.

(*Mr. Rooth.*) I hand in a copy of the translation of the Deed of Award, in the matter of the National Bank.

1538. (*Mr. Ashmore.*) (*To Witness.*) Have you now got the schedules referred to in your statement?—Yes; they are one mass of figures. There is also a statement of the assets and liabilities of the Mint.

1539. The Mint now stands in your books at £39,000?—These are approximate figures.

1540. That is what you claim from the Government now?—More or less.

1541. What was the total period during which you were unable to redeem your notes?—Something under a week. During that week the banks were shut, including the Netherlands Bank.

1542. (*Mr. Loveday.*) You have put in a statement here with regard to the purchase of a property from Dr. Leyds?—Yes.

1543. And you state here at the foot of the statement that search has been made for resolutions in connection with the purchase. In 1889 the market value of this property might have been from £3,000 to £3,500, and this property cost you £5,042, which would have been worth £3,000 or £3,500 at that time?—It appears so.

(*Mr. Rooth.*) The purchase price was £4,500, and the expenses, etc., amounted to £542. I submit that the price which the seller would give for it, or the valuation, would not include the incidental expenses.

1544. (*Mr. Loveday.*) Surely you cannot call £542 incidental expenses? Is it not a very peculiar way of doing business, to have no record of the purchase of this ground?—I should say it is distinctly peculiar to happen now.

1545. Yes; but it is the same bank now that it was then?—It is the same bank in a measure, but under different auspices.

1546. You bring up the interest on investments at the rate of 6 per cent. I thought the bank rate was 8 per cent.?—All our buildings, together with the mint, were on a basis of 6 per cent. The bank rate is simply an arrangement between buyer and seller.

1547. But the ordinary bank rate in the Transvaal was 8 per cent.?—We might charge 10 per cent.; it entirely depends upon the circumstances and the time.

1548. But, as a matter of fact, is not 8 per cent. considered the ordinary bank rate?—I do not think there is any ordinary bank rate.

1549. I could never get any banks to do business with me for less than 8 per cent.?—It is regulated by the Bank of England rate.

1550. Not so much in South Africa. I think the general experience in South Africa is that the banks do not alter their rates. They may reduce a rate very slightly. It used to be 12, then 10, and then 8 per cent., and it stands at 8 per cent. to-day?—I am sorry to say we have undertaken very much business indeed in Johannesburg at 6 per cent., transactions involving many thousands of pounds.

(*Mr. Loveday.*) There is another point to which I wish to refer. On a previous occasion I made a statement, which was not quite correct, to the effect that I believed the Raad had condoned that matter of Kuranda and Marais. In looking through the minutes in connection with that matter, it seems that a resolution was taken by the Raad in 1894, which has never been carried out. That resolution states, with regard to the Kuranda transaction, that while postponing further consideration of the report of the State Secretary and Syndic of the National Bank, the Government is instructed, pending the decision of this matter, to see that the management of the National Bank does not loan more money to one person or firm than is stipulated in Section 8, Article 12, of the concession. This resolution, as I have said, has never been carried out by the Government, so that the matter is really still in abeyance. I make this statement now by way of correction, because previously I was under the impression that the matter had been dropped and *condoned* by the Raad.

1551. (*Mr. Rooth.*) (*To Witness.*) With reference to the expenses in connection with this property, do they include repairs from time to time?—I should presume so; but I have not gone closely into the matter.

(*Mr. Rooth.*) I am prepared to prove to the Commission, through the secretary of the bank, that in this item of £542 was included some money spent on the property purchased from Dr. Leyds.

1552. (*Mr. Duxbury.*) (*To Witness.*) I understood from you the other day, in connection with this transaction, that the property had been purchased in order to provide the mint master with a residence?—So I understand.

1553. I understand also that the mint master was an official appointed by the Government?—No; he was appointed by the bank, and the appointment was approved by the Government.

ALBERTSKROON TRAMWAY CONCESSION (Continued).

Oct. 1900.

(*Mr. F. C. Dumat.*) I appear on behalf of the Express Syndicate, the present owners of the concession. I understand the matter has already been before the Commission in Cape Town, when the Commission called Mr. Kentish Moore, who is interested in the syndicate.

(*Chairman.*) Yes; he then represented the Express Syndicate.

(*Mr. Dumat.*) I have had the advantage with your leave of seeing the evidence which he gave in Cape Town. I now propose to lay before you some further information concerning technical *data*, and to offer you some arguments concerning this matter intended to bring the contract, which forms the subject of the enquiry, within the four corners of the requirements which were indicated by the proclamation constituting your Commission. I take the opportunity of exhibiting to you the Articles of Association of the Express Syndicate, and the registration of that syndicate as a company with limited liability in the South African Republic. (*Articles of Association put in.*) You will have an opportunity of seeing who the shareholders in the syndicate are, and the further information which I will submit will bear out the evidence given by Mr. Moore in Cape Town. The objects of the syndicate included the acquirement of a contract entered into between Mr. Wolmarans and Mr. Moore, and ceded by Mr. Moore to the Express Syndicate.

(*Chairman.*) In order to assist you, I may say that the principal point of difficulty in your case, and the one to which we should like you to address yourself, is the disparity between the plan of the tramway as now set before us, and that which was authorised by the Government.

(*Mr. Dumat.*) It is a difficulty which I do not feel myself. I would like you to allow me to make one reference to this matter. I see from the public prints that your Commission held an enquiry into the monopoly granted to the Netherlands Railway, and that at that enquiry at Cape Town, Mr. Fitzpatrick gave evidence. In the course of that evidence, he went out of his way to make references to the Albertskroon Tramway, which had already been dealt with by the Commission. I shall have no difficulty, I trust, in obtaining from you permission to lead evidence to traverse the statements made by Mr. Fitzpatrick.

(*Chairman.*) It was understood that any statements which he made in Cape Town would be subject to evidence given here.

(*Mr. Dumat.*) I feel it considerably that Mr. Fitzpatrick should have gone out of his way, when he was giving evidence on a matter in which we were not concerned, to make, not so much an attack on the rights of the Express Syndicate, but upon my friend Mr. Moore.

(*Chairman.*) Mr. Fitzpatrick was giving evidence on both these matters. It was when he was giving evidence with regard to this concession that he refers to Mr. Moore.

(*Mr. Dumat.*) That evidence was called without notice to us.

(*Chairman.*) This matter had been heard, and Mr. Moore had given his evidence. The witnesses no doubt are in direct opposition, one with the other, upon it.

(*Mr. Dumat.*) It was simply an attack on Mr. Moore's character. I cannot admit that this is a tribunal before which I can resent such an attack, and I leave Mr. Moore to have recourse to a remedy elsewhere. But that attack goes further. It is made for the purpose of impugning the reliability of his evidence, and his reliability in your eyes, and I claim the right of re-establishing Mr. Moore's position and re-establishing the reliability of the evidence which he gave before your Commission. I ask leave to put in a letter signed by a gentleman connected with the commercial and mining house of Eckstein and Company, occupying in that house the highest position, in order to show you the estimation in which Mr. Moore is held by the firm in question.

(*Chairman.*) I do not think that is necessary; we do not require credentials as to Mr. Moore's character.

(*Mr. Dumat.*) That is what I expected, and what I want.

(*Chairman.*) I quite agree and sympathise with the desire of Mr. Moore to make any statement he thinks fit, if he regards his honour as having been impeached in any way, but we do not require any testimonials in his favour.

(*Mr. Dumat.*) I feel that Mr. Fitzpatrick probably at this moment regrets having made an exaggerated statement. As to the discrepancy between the scope of the scheme granted under the agreement with Wolmarans, and the intention which the Second Raad had when they authorised the Executive Council to deal with that scheme, I wish to make a few remarks.

(*Chairman.*) It is the Government, not the Raad.

(First clause in the agreement between Railway Commissioner Smit and Wolmarans read.)

(*Chairman.*) The sketch plan put in shows that the concession which Mr. Moore seeks to establish goes in a direction different from that. It goes, in fact, right round the Rand mines.

(*Mr. Dumat.*) Government grants to the contractors the right of laying a steam tram from the places mentioned, with such extensions as are shown on the plan marked "A" which becomes part and parcel of the contract with the Government. That is the line which the Government had in mind, which it could not sufficiently describe in the mere wording of a clause of this kind, but which is most definitely and properly described in the plan which the contracting parties had an opportunity of preparing for many weeks, and which they agreed upon as the plan forming the foundation and basis of this contract.

(Plan marked "A" put in.)

Mr. Dumat explained that only half of plan was obtainable, it being large and bulky, and consisted of two sections. Of these two portions only one had been found, and continued: We made a search for the whole plan in the Railway Commissioner's office, which, however, is in a state of litter. Luckily amongst some papers which we had in Johannesburg, and which had not been removed, we found the southern section of that plan with the certificate of the Railway Commissioner to the effect that it was the plan which had been recognised. I take it that this is really the part of the plan which interests the Commission.

(*Mr. Loveday.*) I see that this agreement is registered?

(*Mr. Dumat.*) Yes.

(*Mr. Loveday.*) Well, there must be a plan attached to the registered copy.

(*Mr. Dumat.*) I have been to the office of the Registrar of Deeds, and after a search I found the agreement without any plan annexed. The agreement does not say that this plan is annexed; it only takes the plan which has been agreed to, marked "A," of which both parties, viz., the Government and Wolmarans, each kept a copy.

(*Mr. Loveday.*) If you refer to a plan in a document, surely that plan should be attached.

(*Mr. Dumat.*) I presume they could not attach so large and bulky a plan as this.

(*Mr. Loveday.*) It could have been done on a reduced scale.

(*Mr. Dumat.*) There, at any rate, the fact is that the deed is registered, and that the registering official evidently did not think it necessary to have the plan registered. I think you can take it that this plan is a copy of the original plan alluded to as plan marked "A."

(*Chairman.*) I do not really know that. This registration of deeds is for some purpose, and it is for the purpose of notoriety, so that everybody may know what is being done. If the agreement purports that the line is to be from one place to another place, it is very remarkable that the plan setting forth that line is not forthcoming.

(*Mr. Attorney Hudson.*) It would be a very unusual thing if that plan were not attached.

(*Mr. Dumat.*) There is no doubt it is an irregularity.

(*Chairman.*) You have got the line authorised by the Raad. The concession itself shows the purpose for which this grant was made. The whole scope of this concession shows, speaking broadly, that it was for the accommodation of the brickmakers.

(*Mr. Dumat.*) Not solely.

(*Chairman.*) What can you point out in the concession as showing that this line was authorised through the Raad? It is absolutely foreign to the purposes for which it was granted, so far as can be gathered from the concession itself.

(*Mr. Dumat.*) What is the concession?

(*Chairman.*) The contract between Wolmarans and the Government.

(*Mr. Dumat.*) The contract speaks for itself. It is for the purpose of establishing a line from Albertskroon to Johannesburg, but it says nothing as to the point at which the line is to enter Johannesburg. If the Executive wanted authority from the Raad before they could sign that contract, it was given to the line referred to in this map produced. I see nothing in the Raad resolution or the Executive resolutions, or in this agreement which was actually signed by the authority of the Executive, which stipulates that the line is to enter Johannesburg north, west, east, or south, or at any fixed point.

(*Chairman.*) Yes; but when you say you are going from London to York, you are not supposed to go by way of Newcastle.

(*Mr. Dumat.*) Surely I can go to York by whatever route I choose. It is my object under this agreement to go round and tap the different districts. I wish to show you from the history of this matter how the question of serving the mines was one which did not crop up at the time this contract was signed, but which had been under discussion by the Chamber of Mines and the Netherlands Railway, also the Government, not merely for weeks, but for two or three years before that contract was signed. Owing to the monopoly which the Netherlands Railway held for carrying goods, there had been repeated attempts on the part of the mines themselves to make a breach of that monopoly, and to obtain a right to carry their goods on lines that were different to what I may call the main trunk line of that railway.

(*Chairman.*) It is not very material what passed between Moore and the Rand people, if anything did pass; neither is anything that passed between Moore and the Netherlands Railway Company very material. What is really material for you to show is that the Government and the Raad knew that this line was going to be made in a direction different from that in which apparently it was asked to be made.

(*Mr. Dumat.*) When the Railway Commissioner, by authority of the Executive Council, signed that contract, he had before him the actual plan which has been shown in sketch, and which I am now prepared to show you on a larger scale. He signed that plan, recognising it as the plan showing what route the railway was to follow, and it bears the certificate of the Railway Commissioner. All this was within the knowledge of the Government.

(*Chairman.*) Within the knowledge of the Railway Commissioner.

(*Mr. Dumat.*) And of the Executive Council, because the Railway Commissioner is delegated by the Executive Council.

(*Chairman.*) If you can establish that the Railway Commissioner signed the plan which was referred to, and which ought to be registered, if you can prove that you had got the matter as far as the Railway Commissioner and the Executive Council, even assuming that much in your favour, you have still to get rid of the Raad.

(*Mr. Dumat.*) The Transvaal Government had its own method of conducting contracts of this kind. In reply to what Mr. Loveday has stated as to the irregularity in registering these plans, I can lead evidence to show you that in the matter of the Pietersburg Railway, a much larger and more important undertaking, contracts of a similar nature were drawn up between the Railway Commissioner and the people who had obtained the rights to build that railway. Immense and very voluminous plans were drawn exactly in the same way as in our case, and not one of these plans is registered in the office of the Registrar of Deeds. I am therefore entitled to maintain as a matter of practice that when railway contracts are entered into, and large plans are drawn, with the consent of the Government, the plans were never filed. It is considered sufficient for the protection of parties and the public that these plans should be filed in the office of the Railway Commissioner, where the public could have access to them.

(*Chairman.*) Mr. Loveday tells me that in the case of the Pietersburg Railway it was part of the contract that plans should be prepared by the Concessionaires and should be subsequently approved. But, of course, that is different from this case, in which the plan is spoken of as being made at the time of granting the Concession. 17 Oct. 1900.

(*Mr. Dumat.*) Mr. Loveday, I presume, refers to the working plans, which we also had to prepare.

(*Chairman.*) I understand your first point. You say the Government authorised it upon a plan which you can establish by evidence, the plan now produced, and you have got to give us a reason, which I do not think you have given us yet for the fact of that plan not being in the office of the Registrar of Deeds. I do not think the fact that the working plans of the Pietersburg Railway were prepared after they got the contract is analogous to the case of a plan which was part of the contract itself. You say that so far as the Government is concerned, you are in smooth water. Now, you must show that the Raad, having authorised a railway for the brickmakers from Albertskroon to Johannesburg, can be held to have impliedly authorised you to go beyond Johannesburg, and to tap an entirely different district, and then to come back to Johannesburg.

(*Mr. Dumat.*) Allow me to explain to you the procedure adopted in all matters of railway contracts in this country, and to call your attention to the difference of that procedure and the procedure existing in other countries, for instance, in England. I take it that if a scheme for a railway in England were to be promoted, plans and specifications would be prepared and all the information and data required to enable the Legislature to judge as to that railway would be placed before Parliament. Then a Railway Bill would be brought in, which would crystallise the scheme for the benefit of Parliament. Here in the Transvaal, however, the procedure is totally different. The legislators of the Transvaal dealt with railway matters in the following manner. In the Raad the practice was as follows:—The Government or Executive discussed whether it was advisable on the broadest and most general lines to build a certain railway. When that matter had been discussed, the Executive then went to the Raad and simply placed the matter before the Raad in a minute of a few lines, indicating in the most tenuous manner the intention of the Executive. The Raad then approved of the principle which the Executive indicated, and left the carrying out of the details of the whole scheme to the Executive. That was the procedure adopted on the fact of the Raad resolutions in this matter of the Albertskroon steam tram. Have the Commission these resolutions?

(*Chairman.*) No.

(*Mr. Loveday.*) Have you attached the original letter on which the grant was made; the original letter laid before the Raad, dated 23rd May, 1898?

(*Mr. Dumat.*) From whom?

(*Mr. Loveday.*) From Mr. Van Boschoeten, the Acting State Secretary.

(*Chairman.*) We must have a translation of that letter.

(*Mr. Loveday.*) Yes, and also of the report signed by F. W. Reitz, State Secretary, dated 15th July, 1898, which was referred back to Government.

(*Mr. Dumat.*) I have the whole thing, and my argument is based on these documents. I have not been in a position to get hold of all the Raad resolutions, and the Executive minutes. Is there any other document which you may be aware of, so that I may obtain it?

MINUTES of the First Volksraad of the South African Republic.

Art. 337 (1st June, 1898).

At the request of the State President the Raad departed from the Order to consider the following minute of the Government, and so the following Government minute (EVR 1979/8) was placed on the order by unanimous consent.

R 3776/98. Government Office,
BB 1406/98. Pretoria, 23rd May, 1898.

The Hon. Chairman of the
Hon. First Volksraad, Pretoria.

Hon. Sir,—For your information and the consideration of the Hon. First Volksraad I have the honour to forward you enclosed herewith Minute R 3776/98, covering correspondence *re* the construction of a light steam

17 Oct. 1900 tram between Johannesburg and Albertville, on which the following Executive resolution was taken under Art. 462, dated 28th April, 1898:—

"On the Order Minute R 3776/98 (UVR432/98) covering correspondence concerning the construction of a light steam tram between Johannesburg and Albertville, over Fordesburg, Burgersdorp and Vrededorp.

"The Executive Council, having considered the numerously signed petitions contained in the minute, in which the construction of a tramway above-mentioned is urged with a statement of reasons; recognising the desirability of assisting the poor inhabitants of the aforesaid townships, and especially the brickmakers residing there, by such a tramway for the conveyance of bricks, building material, etc., especially at present, when it is so difficult to get draught animals, and having considered the recommendation of the Government Commissioner for Railways;

"Resolves to ask the Hon. the First Volksraad for authorisation for the construction of a light steam tram between the towns mentioned, to take the necessary steps therefor, and to enter into a contract for the execution of the work."

I request you respectfully to return the minute after disposal.

I have the honour to be,
Your obedient servant,
(Signed) C. Van Boeschoten,
Acting State Secretary.

Art. 339 (2nd June, 1898).

The First Volksraad, considering the Government minute, dated 23rd May last, at present under consideration *re* a steam tram to Albertsville, and further considering that the said minute does not clearly set forth everything connected therewith, as the more expensive brickmakers licences, the conditions of conveyance and otherwise;

Resolves to postpone the whole matter until such time as the Hon. Government lays a full statement of the matter before the Raad, in which everything is set forth clearly, in order to decide then definitely on the matter.

Minutes of the First Volksraad.

Art. 830 (15th July, 1898).

On the order the following minute from the Government.

(E.V.R. 2177/98.)

R. 3776/98. Government Office,
BB. 1841/98. Pretoria, 15th July, 1898.

The Hon. Chairman of the
Hon. First Volksraad, Pretoria.

Hon. Sir,—With reference to the resolution of your Hon. Assembly, passed under Art. 339, dated the 2nd June last, whereby the Government was instructed to submit a full report to the Hon. First Volksraad *re* steam tram to Albertsville, I have the honour to append hereto, reports of the Mining Commissioner of Johannesburg, with which the Government can fully concur.

The first report, dated 20th June, 1898, is as follows:

"The new brickfields on the farm Waterval are called Albertskroon and not Albertville.

"The last-named is a private stand township, with which the Government has nothing to do.

"The full details of this matter will be found in Minute R 12210/96. In this minute the matter with reference to the proposed new brickfields was settled.

"The Government entered into leases with the owners of the farm for a term of 99 years. The original leases are added to the minute before referred to. It is further stated in these leases that the Government collects the licence moneys through my office, of which licence moneys the Government receives the half, and the owner the remaining half.

"How this new brickfield arose can be set forth in a few words. A large number of poor inhabitants, burghers and non-burghers unlawfully proceeded to occupy a piece of ground on Braamfontein near Johannesburg and made bricks, which caused holes, pits and ponds. Among them there were many, who already years ago from time to time sold their former brickmaking stands, and the greater part of the brickfields was (in accordance with R 9399/95) converted into building stands, while only a certain number of old brickmaker stands in the said old brickfields were still kept by a few companies which make bricks there.

"I have already recommended the closing hereof also, and still urge this.

"Now, with reference to the Government ground near Johannesburg Station, above mentioned, this ground was expropriated in 1896 for railway purposes. The poor people who were unlawfully on the ground and worked, had then to leave this ground. The making of bricks was their livelihood for their large families, they would therefore have been very badly off if they had been treated according to their deserts.

"I entered into correspondence with various owners of farms and areas to find a new brickfield, and thereby a means of existence for these poor people. The terms of the owners of Waterval (near Braamfontein) were the only ones which were acceptable to the Hon. Government. The Government received a piece of ground without paying anything therefor, and will continuously receive one-half of the licence moneys. The situation of the farm Waterval is favourable, as it is very easy to lay a branch line from the farm, Langlaagte, thither, a distance of about 2,000 yards. See my minute on pages 3, 4 and 7 of R 16321/97), and the site is of such a nature that the consideration of a branch line will not cost much.

"With reference to the application of Dreyer to construct a light steam tramway, I regard it my duty to warn the Government against it, as this application does not aim at the object of the Government, as also set forth by me in the various minutes above mentioned, viz., to help the poor in the best, and for the Government the least disadvantageous manner.

"The tram mentioned by Dreyer would first run along private brickfields and grounds, whereby these would be benefited, and the Albertskroon brickmakers prejudiced, as the competition between the Albertskroon brickfield and the said private brickfields would bear too heavily on the poor, and the object of the Hon. Government would be defeated.

"I do believe that the owners of Waterval, Messrs. Alberts Brothers, at that time did reckon on the construction of a side line from the railway. On account of that their conditions were very reasonable and advantageous to the Government. If this branch line is built, no third parties are brought into the matter. The Dreyer tram involves nearly exclusively private interests, profit, as it would be a good speculation (through the various private stand townships) the Government and the poor would not derive much profit or any at all. With the branch line it is the converse, and therefore I can with the fullest confidence disapprove of the Dreyer tram, and strongly recommend the branch railway."

The second report, dated 14th July, 1898, reads as follows:—

"Following on my letter, dated 20th June, 1898, I wish to add the following, that if it is provided in the contract that the poor at Albertskroon will in all respects enjoy the preference, then my objection is removed, and I can support the application.

"I further enclose herewith Minute R 3776/98, in which there is Contract R 8252/98.

"The Government can recommend a tramway which shall run from Albertskroon to Vredesdorp, and further up to the old brickfields, as off-loading places, as the brickmakers will certainly be benefited hereby."

"Respectfully I request you to return the minute after disposal of the matter.

"I have the honour to be,
"Your humble servant,
"(Signed) F. W. Reitz,
"State Secretary."

A true translation.
J. De Van Roos,
Sworn Translator.

Monday, 18th July, 1898.

Art. 833.

The First Volksraad, considering the Government Minute at present on the order *re* steam tram from

Albertskroon to near Johannesburg, as proposed in the said minute (*i.e.*, 23rd May).

Resolves: to approve of the minute, and give the Hon. Government the authority asked;

and resolves further to instruct the Hon. Government to arrange with the parties at as low carrying rates as possible for the carrying of bricks, for the benefit of the poor people.

A true translation,
J. DE V. ROOS,
Sworn Translator.

(Translation.)

(*Chairman.*) As I understood your sketch of the procedure, would the promoter first approach the railway commissioner or the executive?

(*Mr. Dumat.*) What happened was this: A man called Dreyer, without the knowledge at all of the people now connected with this scheme, appears to have approached the executive with the object of building a tram line from Albertskroon to Johannesburg. That was supported by certain petitions of brickmakers and poor inhabitants of the district known as Vrededorp, and generally known as the Brickfields. This was Dreyer's own personal concern, with which neither Mr. Wolmarans nor Mr. Moore had anything to do. Mr. Wolmarans appears to have found out that Dreyer was taking such a step, and he then appears to have acquired Mr. Dreyer's rights under this application which he had made, but which had not been defined; it was *in nubibus*. That was the way in which business was done in this country. I want to place the whole information before you, because if there is one thing I intend bringing out in this matter it is the good faith of my client and Mr. Wolmarans. Dreyer obtained absolutely nothing from the Government, his request having been referred to the Raad by executive minute, and having been sent back to the Government with the reply that there was no information before the Raad, and they could not deal with it. At that moment Wolmarans pays Dreyer a sum of £100 to be allowed to step into his (Dreyer's) shoes. This is information which I consider myself in duty bound to give you as Royal Commissioners making an inquiry into these matters. Wolmarans, then, with nothing else than the idea that this line must be built, and that the executive were disposed to favour a breach of the Z.A.S.M. monopoly, began to take steps which would enable him to place that scheme in a practical manner before the people who had the power to carry it out. He goes to Kentish Moore. That is the first time that Moore knows that the Government were considering any scheme of that kind. It was different to the scheme which Moore had for two or three years before been constantly agitating for. Moore was called in as an expert, and he asks Wolmarans to show him what contract he has with the Government. Wolmarans says: "I have no contract, all I have is that the Raad has authorised the executive to build a tram. I want you to draw up a contract—in other words, a Railway Bill—which the Government is going to pass." That is the point beyond which I need go no further at the present. From that procedure I derive this authority to establish the validity and legality of this contract, which was eventually withdrawn by the Government in favour of Wolmarans and ceded to Moore. I established the validity of that contract on this basis. The information which I have given you I can vouch for, as information contained in these minutes, and these minutes are really the only justification or authority which any financial or railway expert could grasp or lay hold of to ascertain whether he was authorised in dealing with the contract which Wolmarans was to obtain from the Government.

(*Chairman.*) There is a letter of the 23rd May—have you got that?

(*Mr. Dumat.*) Yes, it is to the Chairman of the First Volksraad, and is signed by Van Boschoeten, the Acting State Secretary.

(*Chairman.*) That is the letter upon which the subsequent resolution is founded?

(*Mr. Dumat.*) No, that letter is sent in to support the application. The State Secretary is the proper channel between the executive and the Raad. The executive asks the Raad to pass a resolution, and in order to support its request sends this letter to the chairman.

(*Mr. Loveday.*) Then following on that the Raad postponed the matter. Another letter was submitted stating the whole facts, and on the two letters the resolution was taken.

(*Mr. Dumat.*) Now, is there anything in that request of the Executive to the Raad which stipulates that the steam tramway will only be built for the carrying of bricks? 17 Oct. 1900.

(*Chairman.*) A light steam tramway is authorised between Johannesburg and Albertskroon, over Fordsburg, Burghersdorp, and Vrededorp.

(*Mr. Dumat.*) A light steam tram is authorised between Johannesburg and Albertskroon, and the intervening districts drop out completely.

(*Chairman.*) Indeed, they do not; for Fordsburg, Burghersdrop, and Vrededorp are mentioned.

(*Mr. Dumat.*) Fordsburg and Vrededorp are not towns.

(*Mr. Loveday.*) Read the resolution of the 2nd June.

(Resolution of Raad read as follows:—"Resolves to postpone the whole matter until such time as the Hon. Government lays a full statement of the matter before the Raad, in order to decide then definitely on the matter.

(*Mr. Loveday.*) The matter then dropped from before the Raad, and was referred back to the Executive. On the 15th June, 1898, the State Secretary, Mr. Reitz, addresses the Chairman of the First Volksraad, and brings up this matter again, pending the reports of the Mining Commissioner with which the Government cannot fully concur. There are two reports of the Mining Commissioner; one report condemns the scheme and the other supports it. The first report is dated 20th June, 1898, and the second 14th July, 1898.

(*Mr. Dumat.*) My contention is this, that the authority obtained by the Government was to construct a line from Albertskroon to Johannesburg, that if the Brickfields were mentioned by the Mining Commissioner as a possible termination, that was not part and parcel of the instruction of the Raad to the Executive; that the Raad did not bind the Executive to lead that line into the Brickfields; the Executive had a free hand as long as they protected the brickmakers and obtained a cheap mode of carrying their wares into Johannesburg and a cheap means of access from the quarter in which they lived to the Brickfields. That object being secured, the Executive were left with a free hand to grant a contract for a railway which could be built on practical lines, and which, whilst carrying out the object of delivering bricks, would enable that railway to be worked as a commercial concern. Mr. Moore has given you evidence to show how Wolmarans approached him to draw the necessary plans. He went over the ground, and found that it was practically impossible to bring that tram line along any other part of the country than as shown on the contour plan. He has also shown you, and I think would satisfy you after an inspection of the ground that the route as first proposed is covered not only by stands, but by goods sheds and an extensive system of sidings. A letter has been put in from the Netherlands Railway absolutely refusing to put in any crossings, and that if he wants a preference for that particular route, he must go underground. The scheme, therefore, became impracticable.

(*Chairman.*) Let us assume everything you say to be correct; but supposing a difference arises with the railway company, and they say they won't have you there, and won't allow you to make this detour; that means that your concession is useless.

(*Mr. Dumat.*) We do not propose to go round there until we get their consent to do so.

(*Chairman.*) I understand you to say that the Netherlands Railway Company would not allow you to take this route?

(*Mr. Dumat.*) It was impossible to adopt any other line.

(*Chairman.*) So much the worse for you to have accepted the Concession.

(*Mr. Dumat.*) I am only asking that the Government should have the right to allow us to do so.

(*Chairman.*) Can you say that the Government is practically authorised to grant you another Concession to make a railway other than that mentioned in the original agreement between Wolmarans and the Government?

(*Mr. Dumat.*) That is the limit of my argument as to the authority which the Executive Council had to sign that contract. Mr. Moore has told you that he found that he could not take up the bricks at the brickfields, which were impossible of access because he could not be allowed to cross a complicated system of sidings, and therefore he wished to build a line by another route and

17 Oct. 1900.

to have the terminus at a more centrally situated spot. The Executive Council thought it had authority to accept that spot, and they carried out the Raad's intention by stipulating that not a cent more would be charged for carrying the bricks out to that point. That being settled, Mr. Moore saw the advisability and immense advantage of using the line for the conveyance of coal. I take it there is no objection to the concession on the ground that it was only intended to carry bricks.

(*Chairman.*) The objection made is that it does not terminate where it should have terminated.

(*Mr. Dumat.*) I will not labour the question of Mr. Moore's scheme so far as coal-carrying is concerned. I will place before you information to show you it was done with the actual knowledge of every mine manager and with the knowledge of Eckstein and the Goldfields Company. A statement was submitted to all the mine managers, who signed it themselves. The scheme, so far as it had then developed into the further possibility of supplying the mines with coal in bulk was within the full knowledge of all parties interested. There was no hole-and-corner business in the whole thing. Mr. Moore did not use the information which he had acquired as manager of the Road Trust to obtain a concession. As a matter of fact there is no concession granted under the contract, which only grants rights to build a line.

(*Chairman.*) It is no more a concession than an ordinary railway Bill. If Mr. Moore had been fortunate enough to get rights to run from place to place, we should have congratulated him upon it.

(*Mr. Dumat.*) Then with regard to Mr. Fitzpatrick's statement that the military authorities were going to build the line for £67,000, whereas Moore's cost would be £300,000, that witness said Moore's line was to cost £14,000 per mile, whereas the military railway authorities would build it for £4,500 per mile, thus according to Mr. Fitzpatrick the saving to the mines would be 2s. 6d., and yet Mr. Moore in his report only shows a saving of 1s. 2d., the inference being that this company intended to work the line for their own profit. Mr. Fitzpatrick's figures are absolutely inaccurate. If these figures will affect the result of your inquiry, then I will lead evidence to controvert them.

(*Chairman.*) We think Mr. Moore has a right to make such a statement if he desires to do so.

(*Plan of railway put in.*)

(*Mr. Hudson.*) This plan will only be put in for what it may be worth.

Mr. KENTISH MOORE, sworn; and Examined.

Mr. K Moore

(*Mr. Dumat.*) Mr. Fitzpatrick has appeared twice before this Commission and given evidence, once on the occasion when you appeared yourself and on another occasion when he was also giving evidence as to the Netherlands Railway.

(*Mr. Hudson.*) I do not think Mr. Fitzpatrick appeared on the first occasion; he merely rose to contradict a statement.

1554. (*Mr. Dumat.*) (*To Witness.*) You had an opportunity of seeing Mr. Hennen Jennings on this question of the Albertskroon Steam Tramway?—Yes.

1555. Mr. Hennen Jennings is chief engineer of the firm Eckstein and Co.?—Yes.

(*Mr. Hudson.*) Mr. Jennings is at present in Europe, and we are not in a position to put him in the witness-box.

(*Chairman.*) If I remember right Mr. Fitzpatrick said he did not deny that the matter was favoured by the engineers.

(*Mr. Hudson.*) And we do not deny it.

(*Chairman.*) But it is one thing for an engineer to say your plan is very good, and quite another thing to pledge himself to carry it out.

(*Mr. Dumat.*) Mr. Fitzpatrick states that the fact of Mr. Moore having in his evidence said he had letters to the mine managers would lead one to suppose that the firm of Eckstein had approved of the contract which Mr. Moore had obtained. The engineers actually wrote, "We had no objection to the principle of the contract which you have laid before us."

(*Mr. Hudson.*) Does that carry us any further? Surely the opinion of Messrs. Eckstein in this matter has really nothing whatever to do with this scheme.

(*Chairman.*) I think Mr. Moore said at the beginning that Messrs. Eckstein approved of this, and their representative contradicted that statement.

(*Mr. Hudson.*) I merely mention this point. I am here representing the Chamber of Mines, and not Eckstein. Mr. Moore should have taken an opportunity while in Cape Town of repudiating the matter.

1556. (*Mr. Dumat.*) (*To Witness.*) Do you recollect two letters from Mr. Hennen Jennings?—Yes.

(*Chairman.*) But that is not the firm.

(*Mr. Dumat.*) He is the technical adviser of the firm to whom Mr. Moore was referred.

(*Two letters from Hennen Jennings put in.*)

1557. This is Mr. Jennings' signature?—It is.

1558. Who is Mr. Phillips?—He is a member of the firm of Eckstein.

(*Mr. Dumat.*) I submit that the letters written by Mr. Jennings show that the contract was not opposed on principle by Messrs. Eckstein and Company.

1559. (*Chairman.*) (*To Witness.*) You very likely thought that the firm approved of the scheme, but have you got any more evidence of their approval to submit to us?—In Cape Town the question considered was whether my scheme was prejudicial to the public interest. What I want to point out is that the whole organisation of this matter with reference to the public interest is that it has been freely welcomed by everybody. The thing which Mr. Fitzpatrick objects to in a concession is to put money into it. I do not want him to do so. I can easily get the money. This railway was on the tapis for twelve months—two and a-half years indeed—and never one single protest was heard in any shape or form from people interested. The Ecksteins hold 80 per cent. of the mining area, but not a single protest has been submitted to the Government against it. The Chamber of Mines have a genius for protesting against every concession that affects the mining industry, yet neither did they send in one single protest beyond going to the controlling members of the big houses. This would have been an enormous benefit to everybody concerned, as in five years it would have effected a saving of a quarter of a million sterling simply on their coal bill. The whole of the suburbs would have been opened up and the brickmakers also would have benefited. There has been no objection raised at all.

(*Chairman.*) They reserved all their rights, and they did not subscribe.

(*Witness.*) You know Mr. Fitzpatrick's prejudices.

(*Chairman.*) By this letter, Mr. Jennings said he was unwilling to tie the hands of the representatives in the Transvaal, and had no power to make promises. The assurances which you sought from home he was unable to give, and yet you say you are aware of Mr. Fitzpatrick's prejudices.

1560. (*Mr. Dumat.*) (*To witness.*) Did you see Mr. Fitzpatrick with regard to the scheme?—I never saw him.

1561. Whom did you see?—Mr. Eckstein, Mr. Rouliot, and all the rest of the staff.

1562. They are partners and they gave you a letter to the firm of Wernher, Beit and Co.?—Yes. Mr. Hennen Jennings was the mining engineer of the firm for a long time.

1563. I believe Mr. Jennings' opinion was against more money being put into the Rand? He was more strongly of that opinion than any other engineer?—Yes.

1564. Before you went home you had several interviews with mine managers owing to letters of introduction from Eckstein?—I went to see Eckstein, and as a result of that interview, I was sent on to Mr. Seymour. In consequence a meeting of engineers was called at Eckstein's office, and I was afterwards sent out to the mine managers with a letter of introduction from the late Mr. Seymour to consult them as to the route. The date of that letter is 16th March, 1899. As the result of the discussion with each manager, and after this plan was signed I returned to Eckstein and Co., and saw someone there who was kind enough to take me to Mr. Rouliot, and he gave me a letter to his London firm for the simple reason that you could not raise a penny if Wernher, Beit and Co., and Eckstein and Co. objected. Although I received that letter from Mr. Jennings

stating that his firm did not object on principle, but practically refusing to subscribe, one week afterwards I had got half a million of money underwritten. This is nothing but a public Bill. There is nothing detrimental in it. The mines have in no way been ill-treated; I have a practical scheme on which I can raise money, and I have limited the dividend to a sufficient point. The mines will immediately save £50,000 a year, and in six years it means a rate per ton of 1s., and at the deeper levels a quarter of a million of money will be saved.

1565. You say you had a meeting in Eckstein's office of engineers, what engineers?—May I read a letter from the Express Syndicate who attended this meeting in Eckstein's office? It states who was there, and gives the result.

(*Chairman.*) A letter from the secretary of the syndicate is rather remote. I think the witness has made it perfectly clear what his position is.

1566. (*Mr. Dumat.*) On that question of the cost per mile, Mr. Fitzpatrick states that your estimate is £14,000—he gathers that from your report, also at the comparative cost of building by the military is £4,500 per mile. Please explain this difference?

(*Witness.*) There is a mistake somewhere. I think Mr. Fitzpatrick has not carefully selected the figures. £4,500 is simply the work, the permanent way. My figure is £4,666 if the military authorities are using this cheap labour. £14,000 is mentioned in a private report from the Engineer of the company to his proposed Board. The Engineer would naturally remember that if you put in this main line you are bound, under Law November 23rd, 1898, to allow any mine to join on a siding. You are going to have a lot of trouble with the mines, he would think, and it is therefore much better to arrange the finance, to get sufficient underwritten so as to get the thing through. The amount which I said must be underwritten was £476,000, divided by 34 miles, which is a mile of track, and not a mile of line—these tracks are goods yards and expensive work to undertake. There would be 15 miles at £6,000 per mile, and administration during construction is not included in the Military Railway, but is necessary for a private Company. A cost of £6,000 per mile for the brick line is a reasonable figure. My scheme would enable the mines to arrange for the construction of these sidings, and if they did not put their sidings in to deliver coal in bulk they would not gain a shilling per ton. My underwriters were prepared to underwrite to the extent of £214,000. If you allow for permanent way, the cost of junctions, etc., the net result is that the whole thing works out at £9,000 per mile of track.

1567. (*Mr. Ashmore.*) The point was this—you provided for a sum of £476,000, whereas your own estimate came to £308,000, so there was not so much a difference between the cost of the railway as made by the military and the cost made by you, but between the cost incurred by you and the total sum of money which was to be raised and a proportion of which was not going into the railway at all?—That is easily explained. Any sane Board of Directors would think first of all that they have got to build a main line and sidings, and the first share capital would be issued very much under par, because the mining industry and the general interests on the Rand refused to assist the financing. Directly the sidings came in and we got a connection with the mines, the shares go up in the market, the next £150,000 go up to 95, and the result is that we have got in half a million pounds, and we have only issued £475,000 shares, while the Company is not detrimentally affected.

1568. (*Mr. Ashmore.*) Where does the £176,000 come in?—We do not propose to issue £476,000 shares, but a quarter of a million debentures.

1569. How do you make it £14,000 a mile?—That includes extensions to the deeper level mines which they have a right to claim. We have to provide them if necessary.

1570. What would that mileage be?—About seven miles.

1571. Divide £476,000 by 34, and I think you will find it comes out not less than £14,000 per mile?—The arithmetic is quite right, but before that expenditure is reached, £150,000 has got to be spent on rolling stock, which we should have obtained by issuing ordinary shares held in reserve. The arrangement made between the Contractors and the Express Syndicate was that the latter were to receive net about a sixth of the ordinary capital. We did not quite know what was going to happen; the agreement was a little elastic and would require reshaping. The Syndicate would thus receive 40,000 shares, and one-twelfth, roughly speaking, would go to myself as the Engineer, and one-twelfth would have been for express Syndicate expenses for remunerating the people who had helped us in London; therefore we have one-sixth to the Express Syndicate, £40,000; one-twelfth to myself, £20,000; and one-twelfth towards expenses—£80,000 in all.

1572. As a matter of fact, you entered into a contract with the underwriters for the issue of the shares?—Yes.

1573. At what rate?—That, again, was a movable agreement, and practically worked out at what the cost would be per mile, first of the main line and then of the sidings; they would have done the whole thing for £250,000 debentures and 80,000 ordinary shares. They guaranteed to take these up from time to time according to the market rate. We paid them in shares instead of in cash.

1574. And your estimate was £308,000?——

(*Mr. Dumat.*) Mr. Moore further reserved this right that he paid as the work was done. If at any time he could place his shares he had a right to place them and pay in cash.

(*Mr. Ashmore.*) That was not at all unreasonable.

(*Witness.*) This was a fair business transaction. I should like to say one thing. Being a member of the Institute of Civil Engineers, I am absolutely bound to take notice of what Mr. Fitzpatrick said. He has accused me of a gross breach of trust, and I must take notice of it.

(*Mr. Dumat.*) There is no necessity to call another witness to corroborate these financial arrangements. (*Plans as signed by mine managers were here put in.*)

1575. (*Chairman.*) You said last time, but you did not say it very firmly, that you were under the impression that your plans had been made use of by someone else?—No sir, I have discussed the matter with Colonel Girouard, the Director of Military Railways. I said my scheme has been adopted by the railway authorities. The line has been so built that it is impossible to carry out my scheme unless they let us buy up their earthworks.

1576. Assuming that for any reason your contract is not deemed to be valid, do you claim any consideration for the use by anyone of your plans? I shall claim no consideration whatever from the British military authorities. That matter has been settled quite amicably. I have not the slightest intention of making any claim for the use of my plans.

1577. I was not suggesting that you would make any legal claim?—It has nothing to do with me, it has had to with the Express Syndicate.

(*Mr. Hudson.*) I may say the Chamber of Mines was in communication with the Government as early as 1897 with regard to the construction of a Southern Railway. At that time they formulated a plan similar practically to Mr. Moore's plan. I do not wish to say that he adopted our plan, but if you put down any half dozen engineers to draw up a scheme they would all come to the same decision.

(*Witness.*) Another remark I would make is this, there is a suggestion of animosity in this inquiry which is a great pity; here we have another suggestion that I have adopted somebody else's plans.

(*Mr. Hudson.*) I carefully wished to avoid any such insinuation; what I said was that any half dozen engineers would probably prepare similar plans without reference to each other.

(*Chairman.*) Mr. Hudson made no suggestion regarding you whatever.

Witness re-examined by Mr. Dumat, and shown blue plan.

1578. Is this blue plan a print of the plan referred to as plan marked "A" in the agreement?——

(*Chairman.*) What is that plan?

(*Mr. Dumat.*) This is a blue print of the plan deposited in the Government Offices, half of it, the other half I cannot find, but this part is the half referred to as showing the extensions over the mining area, and it has the Railway Commissioner's certificate upon it.

Mr. K. Moore.
17 Oct. 1900.

1579. (*Chairman.*) This is a copy of the original which was filed. Did you file the original document?—Yes; the date is 23rd February, 1899, and it was filed in the Government offices.

1580. When you say the Government offices, is there a special Railway Department?—Yes.

1581. Was it filed in that department?—I went with my solicitor to file the contract in the offices of the Registrar of Deeds and also took the plan. I have a very good recollection of the fact that the plan was taken straight on to the Railway Commissioner's office—there might be a receipt, but it is not the custom in this country to file large voluminous plans, but only small foolscap copies.

1582. (*Mr. Loveday.*) But the plan is specially referred to as plan marked "A" attached?—Perhaps the Commission can obtain permission to search the Railway Commissioner's office. There is a great pyramid of plans there now.

(*Mr. Dumat.*) Mr. De Wildt, the technical adviser, is now in Pretoria and he probably could throw some light upon the authenticity of that plan.

(*Chairman.*) The certificate is as follows:—"20th May, 1899. I certify that this is a true copy of the plan 'A,' according to the agreement in connection with exploitation or working of a steam tramway at Albertskroon. Dated, Johannesburg, 23rd February, 1899. Pretoria, 20th March, 1899." There is no signature; then there are the words "Technical Adviser" and "Chief Engineer of Railways in the South African Republic." That is stamped at a different time.

(*Mr. Dumat.*) The date, 23rd February, is the date of the contract.

(*Chairman.*) This is stamped by somebody who is not the Railway Commissioner.

(*Mr. Dumat.*) Probably Mr. De Wildt, the technical adviser.

1583. (*Chairman.*) (*To Witness.*) You pledge yourself that a copy of this plan was taken to the Railway Commissioner, and you are under the impression that it was taken to the Registrar of Deeds, and sent on by him to the Railway Commissioner's office?—My solicitor and secretary were with me at the time. I have no witnesses to prove anything beyond this. The Railway Commissioner's office is in a most dreadful state.

1584. (*Mr. Hudson.*) Was the original plan signed by both parties, by yourself, and the Railway Commissioner?—I was not the original concessionaire.

1585. You were not present at the time it was accepted?—Yes, I was; it was signed in the Railway Commissioner's office.

ERMELO RAILWAY CONCESSION.

Mr. W. Pott, called; and Examined.

Mr. W. Pott.

1586. (*Chairman.*) You are a director of the Ermelo Railway Company?—I am.

1587. When did you acquire this concession? Was it granted in the first instance to you?—No. It was granted to a certain Maherry. I purchased it on behalf of my pricipal, Mr. Henderson, from Maherry.

1588. This concession is now before us. It was signed on the 27th April, 1898. Is that the concession which you purchased?—Yes, that is the date of signature.

1589. Mr. Henderson formed a syndicate in the first place, and the syndicate assigned over to a company?—Yes.

1590. Have you any resolution of the Raad authorising this?—Yes, there are various resolutions dealing with it, and instructing the Government to have tenders called for. I cannot get copies of the resolutions, as I have had no time to do so.

(Chairman requested the witness to get copies.)

1591. Are these resolutions (authorising the concession?—I think they are enumerated in the papers which we have. I can give you copies of all the documents.

1592. All we see here is that the Government Commissioner was authorised to enter into this agreement by the Executive Council by Article 214 of 25th February. This concession which you purchased was afterwards modified?—Yes.

1593. In the first place the concession was for a light railway from Dalmanutha to Ermelo?—Yes, it was in the First Raad resolution. It mentioned Machadodorp, and ultimately it was altered back to Dalmanutha, but some of the landowners over whose ground it passed objected, and owing to this the Government caused us to move it back to Machadodorp.

1594. Was that a large alteration?—It caused us a great deal of further expense, because the survey plans were already passed for Dalmanutha. It increased the length of the line, and also the difficulties of construction.

1595. In the first instance you made plans for a line to Dalmanutha, and these were passed by the Government?—Yes, they were working plans, and entered fully into details.

1596. Are these plans here in Pretoria?—They must be in the Railway Commissioner's office. We have copies of them in our office.

1597. Do you know what the expense of that was?—From memory I cannot say, it caused a new survey.

1598. Yes, but the survey you made for the whole length of 70 miles, both the survey and the making of the plans?—The plans and survey cost, I think, about £12,000—that was up to the date when the company took it over. The syndicate had not done all that work. Mr. Henderson had done part of it personally before the syndicate was formed, but the syndicate took it over from him, and finally the company took it over from the syndicate.

1599. Can you tell us when the company took it over from the syndicate?—It was ceded to the company in June, 1899.

1600. What did the syndicate pay Henderson, and what did the company pay the syndicate?—The syndicate paid Mr. Henderson nothing. The company paid the syndicate £50,000 shares.

1601. Henderson was a member of the syndicate?—Yes.

1602. (*Mr. Loveday.*) What did Henderson give Maherry?—10,000 shares.

1603. (*Chairman.*) The railway was 70 miles long, what is the anticipated traffic?—Coal traffic chiefly.

1604. Where is the coal district?—All along the line. Mines have been opened up at Ermelo.

1605. (*Mr. Loveday.*) They are due south of Machadodorp, south of the Delagoa Bay Railway?—Yes, it is supposed to be a good marine coal.

1606. Machadodorp was the nearest point you could reach?—Dalmanutha was nearer, being further this way, and a shorter line for us. It meant more line of the Netherlands and less of our own.

1607. (*Mr. Ashmore.*) Is it a very difficult country you run through?—Part of it is mountainous.

1608. (*Mr. Loveday.*) You had to deposit £30,000?—Yes, that has been done; it is in the hands of the Government.

1609. Do you know if that was invested by the Government in State securities?—No. There was no communication made on that point.

1610. (*Chairman.*) Was all the construction done under the supervision of the Government?—Oh, yes, everything; they had full control.

1611. Did they exercise that control?—Yes, very much so.

1612. Who was the official that did so?—Railway Commissioner Smit.

1613. (*Mr. Loveday.*) Did he have a special representative on the line looking after the things?—Sometimes Joubert, but it was very generally done in the office by means of plans.

1614. Your earthworks are now completed?—They were never passed.

1615. (*Chairman.*) Before you can open the railway, you would have to get all the construction works passed by the Government?—Yes.

1616. You would be quite prepared if the concession went forward to accept the same position?—Yes.

1617. The Government have a representative on the board, one member was appointed by the board at the request of the Government?—He was not appointed by the Government, but they asked that a certain gentleman be appointed, and he was chosen as their representative.

1618. Then there are provisions against defective work. All lands were granted to you necessary for the railway free?—We had to pay where the Government had to pay, that is where the line goes through cultivated land; compensation had to be given to the owner.

1619. Your materials were obtained free of import duty?—Yes.

1620. And you say this was a light railway?—It is an ordinary railway with heavy rails.

1621. It is called a light railway in the concession?—I know, that is a very elastic term, the meaning of that is that it is a branch line, and not so much a light railway. I think the metals are the same weight as the Netherlands Company.

1622. (*Mr. Loveday.*) The Selati is a light railway with 45lb. rails?—Yes, the Netherlands and ours are 64lb. rails.

1623. (*Chairman.*) Your line has to accommodate the Netherlands trucks, and must be of the same gauge and of sufficiently heavy metal to bear the weight?—Yes.

1624. In this original contract dated 27th April, 1898, the preliminary surveys had to be started within six months, and the railway was to be finished within twenty months after the concession was accepted. Was that done, or did you get an extension?—The time is not yet up.

1625. Did you get an extension of time by a subsequent agreement?—The Government was so long in passing our plans, then there was this dispute with regard to the survey, and so they gave us an extension of twelve months.

1626. It is proposed to employ steam, but you have power to employ electricity as the motive force?—Steam is intended to be used.

1627. You were bound to submit to the Commissioner of Railways all regulations for the service and working of the railway. Article 32 of the Concession states that it is accepted upon payment before September, 1898, and that has been altered to February 1st, 1899?—Yes.

1628. Did you carry out that condition?—Yes, we deposited the money.

1629. Had you by that time formed your company and acquired the share capital?—No, the company was not then formed, and we advanced the money ourselves. The Syndicate lodged the £30,000. We showed that although it was not completed it would be; the thing was in hand.

1630. When was the company formed and the capital subscribed?—The Articles of Association were approved by the State Secretary on 19th January, 1899. They had been approved by Mr. Smit, Railway Commissioner, on 9th January.

1631. What was the capital of the company?—£300,000.

1632. Was that all issued?—Yes, the whole amount was subscribed, the Government took £50,000 themselves, and £50,000 went to the syndicate. The Government paid for their subscription, and that left £250,000 for working capital.

1633. Did you have debentures issued?—None so far. Just before the war broke out the Government advanced £50,000 cash, as they did not want us to issue debentures. They said that times were very bad, and they would advance us £50,000, which they did.

1634. Therefore you had £300,000 cash working capital?—Yes, except the £30,000 which is in the hands of the Government, there are also outstanding accounts in Europe for plant, rolling stock, sleepers, etc., some of these have been paid for. Part of the plant is at the Komati bridge, and part of it is at the coast. These were partly payments against shipment.

1635. Has the whole amount of £300,000 cash been either spent or is it committed to be spent?—Yes, that is why we were pressing for the issue of debentures. We could not order goods before we had the cash in hand.

1636. Of the seventy miles you say all the rails have been laid?—No, I am not very well up in that, because work was going on after I left. There were no meetings for the last three months, and the engineer's reports have not been received.

1637. What was it estimated the construction proper should cost?—That information will be in the engineer's office

1638. Do you recollect what it was per mile?—I do not remember; we can get it in the office.

1639. You cannot say how much share capital and debenture capital you anticipated having to raise?—Approximately about £650,000, I think. The Government limited us to £650,000, but the alteration of the line involved a greater expense, which we pointed out at the time, and stated that more debentures would have to be issued, but not very much more.

1640. So that in order to go on, you would have to issue debentures?—Yes.

1641. (*Mr. Loveday.*) Did the syndicate pay for the survey, or did the company pay?—The syndicate paid for it originally, and then the company paid for certain surveys afterwards. They did not repay the £10,000 that we paid Maherry. There were other expenses too, but the company did pay the bulk of the actual cost of the line.

1642. I understand the syndicate was paid simply for making over the concession to the company?—No, there were all the initial expenses with regard to the undertaking for a couple of years, expenses we could not include, such as my travelling expenses, besides cables, etc.

1643. What did that amount to?—I cannot say, possibly £5,000.

1644. There was £10,000 to Maherry, and £5,000 expenses, which would leave £35,000 to the syndicate. A man makes an application to the Government for a concession which he gets, and he makes it over to a syndicate; this means that £50,000 is divided practically among different people?—Yes, for work done. In the case of the Selati Railway only £10,000 was allowed.

1645. (*Mr. Loveday.*) The Selati had other monies. There was a special sum for making over the concession?—There have been no outside payments in our case. We would not have got that had it not been that the Government wanted to change the line after they had confirmed the plans. By the original concession there was absolutely nothing to be given for the cession. It was to be a free cession without any bonus shares at all, but they ran themselves into a hole by passing our plans and then forcing us to alter the route.

1646. So you had an opportunity of getting at them?—Yes.

1647. (*Chairman.*) How long has the work been hung up now?—The last work was stopped about five months ago, but it was dwindling down to that point. One contractor was working at that time.

1648. You went on working during the war?—Oh, yes.

1649. (*Mr. Ashmore.*) How long would it take you to open if you had a chance of setting to work?—We reckon to do it within our limit of time, 30 months from the time we started. We have our own engineer, and all the work has to be done by the company itself, by public tenders in sections.

1650. The concession is for 99 years?—Yes, with the right of expropriation.

1651. (*Chairman.*) The Government have no responsibility other than that 3½ per cent. guarantee?—No.

1652. They have no responsibility as regards the working of the line at all?—None at all. They have control, but no responsibility. That is all at our expense.

1653. (*Mr. Loveday.*) Supposing you went into liquidation because the line did not pay?—The Government would collar the lot.

1654. What is the exact position of the Government in case the line does not pay?—They would take over all our assets.

1655. But if you owed money, they could not take your assets without paying your debts?—(No answer.)

1656. (*Mr. Ashmore.*) Was there ever any estimate made of the probable traffic?—Yes; from memory, I think it was 40 trucks a day of coal. Any one mine would turn that out. It is to a certain extent a wool country also.

1657. There is little or no population, is there?—Yes,

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there is a good rural population. Although it says nothing about it in the contract, it was an understood thing that the company would get an extension of the line to join on to the Natal line.

1658. (*Chairman.*) Expropriation was to be on a basis of 20 years' purchase for the best three years of the last five?—That is so.

1659. (*Mr. Ashmore.*) Is there a rate section?—Yes.

1660. (*Chairman.*) You would not object to ask from time to time for a revision of these rates. I suppose that would be an ordinary incident of a railway's existence?—Yes.

(Chairman asked if anybody was present to oppose concession.

(*Mr. Hudson.*) I understand this is not in the nature of a monopoly.

(*Chairman.*) It is an ordinary form of railway like an English railway, but the tariff is subject to the approval of the Government, and Mr. Pott says he does not object to come under that provision

1661. (*Mr. Ashmore.*) The Government is so far interested that it will always wish the company to earn its 3½ per cent. (*To Witness.*) Is it not rather an expensive line to build?—Yes.

1662. It comes out at about £8,000 a mile?—About that; between £7,500 and £8,000. It depends entirely on what the tenders come to. We are doing it at present under our estimates.

1663. What do you estimate the loss to the company by changing from Dalmanutha to Machadodorp? I do not mean the increased cost of the line, but the expenses. You say your company was put to expense owing to the loss of the survey?—Several months' work was lost owing to the change of plans. Time was the chief thing, and I know that several thousand pounds were absolutely wasted.

1664. 50,000 fully paid up shares appears to be even more than an adequate compensation?—As I frankly say, we took advantage of our position. Mr. Henderson and the syndicate were losing money. We did not get a penny of the £10,000 back, and we made the best terms we could.

1665. (*Mr. Loveday.*) You never expected to get anything back from Maherry?—We never got that money back. If the Government had not made that mistake, we would have got nothing for it at all.

1666. (*Mr. Ashmore.*) All we want now is the resolutions of the Raad?—I can get these and also the engineer's estimate of cost.

1667. And if there is an estimate of the probable traffic, I should like to see it?—I know there was one, but whether it was written or not I don't know. It was about 40 trucks of coal a day.

1668. (*Chairman.*) How long has the Ermelo Mine been opened?—There are several, and there are also a large number of mining properties all along the line. They are not all opened up yet, but the Ermelo Mines are supplying coal in a small way.

1669. The coal is said to be of a very good quality?—It is about the best in the country. I think, for marine purposes, it is better than Natal coal—that is, according to the analysis.

1670. (*Chairman.*) Have the syndicate got their 50,000 shares yet?—Yes, they hold them.

1671. (*Mr. Ashmore.*) The position is this. The concession authorised them to raise £600,000, of which £300,000 were to be debentures and 300,000 shares. Your present proposal is that you should raise £350,000 in shares?—No. We have raised cash on shares, and we have got a loan from the Government of £50,000 cash, which will be taken up by the Government in debentures or repaid when the debentures are issued. This is only a loan.

1672. The authorised capital is £600,000, but that did not include the issue of any shares to the syndicate?—The matter, I think, was left in the hands of the Government.

1673. What is your authority for this extra £50,000?—It is an agreement which will be seen in the addendum. It was the Raad that made the alteration.

(*Chairman, to Witness.*) You must give us all the resolutions of the Raad which you say authorised this agreement.

RAND ELECTRIC POWER COMPANY.

(*Mr. H. T. Thompson.*) I have a short matter which the Commission might deal with, viz., the Rand Electric Power Company. It is hardly clear to me that it comes within the province of the Commission. The Simmer and Jack is a large mining company on the Rand, which floated a number of subsidiary companies: Simmer and Jack East, Simmer and Jack West, Knight's Deep, the Jupiter and Rand Victoria. These are all joined to the Simmer and Jack. To obviate the expense of each company having its own electric lighting power, they have decided that it should be supplied by the parent company, and that the expense should be distributed amongst them. They formed a company with the object of defining their respective shares, interests, and responsibilities in this electric motive power. As the Government owns the surface of all mining claims, in so far as they are not required for mining purposes, and there are roads intersecting the properties, it was deemed advisable to enter into a contract with the Government obtaining permission for the construction of what was necessary to carry out this motive power. This contract is now submitted to the Commission. It is not in the form of a concession.

(*Mr. Hudson.*) This contract is merely confined to these particular companies, and does not contain any other right in regard to the inhabitants?

(*Mr. Loveday.*) There are no resolutions of the Volksraad with regard to the power of the Government to grant steam power or electric trams. You do not know under what power this was granted?

(*Mr. Thompson.*) It is under the provisions of the Gold Law, by which the Government has the right of granting all such privileges. I can show it to you in the Gold Law.

(*Mr. Hudson.*) I have to state on behalf of the Chamber of Mines that they have no objection to rights of this description, which are purely mining rights. It would merely hamper and interfere with mining operations if it did offer any objections.

(*Chairman.*) This is merely an arrangement made between these various gold mining companies to have their electric light installed on the most convenient basis.

(*Mr. Thompson.*) It is a family arrangement.

(*Chairman.*) I do not think we need go into it.

Mr. Thompson requested that this decision might be recorded on the papers.

(*Mr. Lance.*) Does it not become a question whether the Rand Central Works is not in the same position; only instead of being limited to half a dozen companies, it defines the area along the Rand.

(*Mr. Hudson.*) It is different in this respect, that it is not for the purpose of supplying companies' own works, but supplying the community generally with electric power.

(*Chairman.*) I think there is a difference. These private individuals met together simply to secure certain rights for their own advantage.

TENTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Thursday, 18th October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

NETHERLANDS SOUTH AFRICAN RAILWAY CONCESSION (CONTINUED).

18 Oct. 1900.

Mr. Attorney Lance **put in on behalf of the Johannesburg Chamber of Commerce a comparative statement of railway rates.**

(*Mr. Advocate Curlewis.*) It seems that Mr. Hosken will not be able to attend, but I think that any general objections to this monopoly, in view of a counter demonstration by the Netherlands Company, can be stated by Mr. Lance, who is not only the attorney for the Chamber of Commerce, but a member of the Executive Committee. Perhaps the Commission will hear his evidence as to the complaints which the mercantile community have made from time to time with regard to the Netherlands Railway traffic regulations.

(*Mr. Lance.*) I am quite prepared to give evidence, but what I can give is really hearsay evidence. I am not a merchant myself, but I have been present at very frequent discussions of the Chamber in connection with Netherlands Railway matters, and I am fairly well acquainted with the different points, especially matters under these regulations.

Mr. Curlewis, in argument, said: The Netherlands Railway Company, in addition to this concession, had what they called general and special regulations, under which the administration of the company was carried out. These general regulations were drawn up by the company, and submitted to Mr. Smit, who was called the Government Railway Commissioner. Mr. Smit submitted them to the Executive Council, which in its turn confirmed and published them. These regulations are embodied in the statutes of the South African Republic for 1890-93, and are issued in book form. But although they appear in the Statute Book they are not law; they do not have the force of law because they were not passed by the Volksraad. They were merely confirmed and passed by the Executive Council. A case in illustration was heard before the High Court—I forget the name of the plaintiff—against the Netherlands Railway Company. The company relied upon these regulations as having the force of law, and it tendered to the plaintiff the sum of 1s. per pound weight as damages for the goods that were lost, in compensation for the claim of the plaintiff. The case was decided in favour of the company in the Lower (Magistrate's) Court, and it was taken on appeal to the High Court, where it was decided that these regulations had not the force of law. It was held that they were only regulations, and that if the company wished to evade their Common Law liability they could do so only under a contract entered into with the consignor or consignee. Therefore, because these regulations happen to be in the Statute Book, I submit that the Commission should not take them to have the full effect of the laws of the country. If necessary I can quote the case and lay the official reports before the Commission. I was engaged in the case myself, but unfortunately I do not have the full official report in my library.

(*Chairman.*) I understand that the case decided that these regulations did not have the force of law, and that each claim for damages on account of loss and liability for such loss must be decided on its own merits, on a special contract between the company and the consignor or consignee. However, the discussion of these regulations does not seem to be very material if this decision has been unreversed.

(*Mr. Curlewis.*) The case in question was brought by a man who lived along the line, and who sent certain articles of clothing by rail, which were lost on the way. The court held that these regulations did not have the force of law, but the company have always attempted to evade their obligations, such being a prolific source of complaint. This was one of the first cases in which a member of the public sought to test the point by bringing the complaint into court. The company invariably opposed any claim, and it was only after an action was instituted and a good deal of expense had been incurred that they would settle the case just before it appeared in court. They did so in order to avoid publicity or notoriety.

(*Chairman.*) It is hardly worth while to go into this matter at any length or to discuss regulations which have not the force of law. According to what you say, the trading community had their remedy in their own hands. They need not enter into a special contract, and unless they entered into a special contract the common law would be in force.

(*Mr. Curlewis.*) Unless a special contract was entered into the public could not have their goods forwarded. As public carriers the company could throw a hundred and one obstacles in the way. Supposing goods were consigned from Delagoa Bay, the merchants found themselves compelled under Section 23 of the regulations in most cases to get the goods carried at what was called the lower tariff and take all the risk upon themselves or be put to inconceivable delay. If they did so the company frequently tried to evade its responsibility for the fraud or negligence of its employees. The company went so far as to say that if anything was conveyed under Section 23, Sub-section B, it was not responsible. I will give you an instance. A truck load of bags was consigned from Delagoa Bay to Reiners Von Laers and Co., Johannesburg. They got notice from the consignors at Delagoa Bay, but the truck did not arrive. They made inquiries, and the Netherlands Railway Company said they could find no trace of the truck. The company were asked for compensation for the loss of the bags, which were valued at £120 or £130. The Netherlands Railway said, No, it was under the 23rd Section, Sub-section B, by which they undertook absolutely no risk. When asked to explain they said, No, it was not their place to explain or show what had become of the bags. The result was that the consignees were called upon to undertake an absolutely impossible task, namely, of tracing the property from station to station, and to prove that it had been either stolen or destroyed. An action was instituted, and after considerable delay, the firm being put to immense trouble in sending to Delagoa Bay in order to get evidence from the railway authorities there that this truck had been sent over the border and had been duly received, the Netherlands Company said that the truck had been burnt and everything destroyed. The unfortunate client was mulcted in £50 or £60 costs, and the railway company got off with £125 damages. That is an instance to which Mr. Lance can speak.

(*Chairman.*) The owners' risk clause is in every railway contract or agreement.

(*Mr. Curlewis.*) But what about the special contract?

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(*Chairman.*) This would be a special contract. The company offered a bona-fide alternative rate, and that is with the object of bringing the knowledge of what he is doing clearly to the mind of the consignor. Then if the owner chooses to take the owner's risk, the only liability of the company is for the wilful misconduct of their servants.

(*Mr. Curlewis.*) Yes, negligence or misconduct.

(*Chairman.*) No, they are absolved from delay or negligence unless that delay or negligence amounts to wilful misconduct, and the onus of the proof lies upon the consignor.

(*Mr. Curlewis.*) I should also point out that these waybills are in Dutch. They are signed by the merchants, who do not really know what they are signing. But departing from that, we have this particular instance: Supposing a consignor chooses to send his goods under 23A, the company accepted liability. You would therefore imagine that by paying the higher rate he would have a fairly good chance of compensation. You will observe that the very first exception mentioned in Section 24 is "Fire," which is a most prolific cause of damage for goods on the line. Destruction of valuable property by fire frequently occurs on account of the engines not being properly constructed or from other causes. But even if you chose to send your goods under Section A, and the truck containing your goods should get damaged or burnt you must, all the same, sign according to these regulations.

(*Chairman.*) Are there no notices posted up at goods stations with regard to the owners' risk, the alternative rate and the ordinary rates? Are these not published?

(*Mr. Curlewis.*) The first notice with regard to rates published by the Netherlands Railway Company in English for the benefit of merchants was in September, 1899. The merchants have always clamoured for an English translation of the various rates, and it appeared in the form which I have here. Paragraphs 3, 4, and 5 refer to vehicles. The company simply would not take the risk of carrying as goods vehicles or other means of locomotion unless the value thereof was insured according to Section 30. They have a system of insurance, according to distance, of from a quarter, a half, to one per cent., when you choose to take the lower or the higher rate. Under Section 6 vehicles, in consequence of want of space in the goods shed, could be stored in any open space by the railway company, with or without covering, and with or without the consent of the consignor or consignee; and if any damage to the vehicles occurred, the company merely said, "We had no room, and we are not responsible."

(*Chairman.*) That is in the case of vehicles.

(*Mr. Curlewis.*) No, goods or vehicles.

(*Chairman.*) That is not very unusual. There are a good many things of which a railway company is not a "common carrier." They are only "common carriers" of things which they profess to carry. Carriages are expensive and cumbrous things, and I do not think it is objectionable that a railway company should say they will only carry such articles at certain special rates.

(*Mr. Curlewis.*) But, if the merchant does get a special rate, surely his liability is removed and placed upon the shoulders of the carrying company.

(*Chairman.*) The term goods in this connection is certainly a much stronger order, and seems to me to be a very odd collocation.

(*Mr. Curlewis.*) The phrase used in the Dutch is "riding or other vehicles." Clause 6 sets forth—goods or vehicles which, in consequence of lack of space in the goods shed, the company deposits or stores elsewhere, either with or without the consent of the consignor or consignee, and in that case they are not responsible. They absolve themselves from all liability. Then the Netherlands Railway maintain that they are not responsible for free luggage, or luggage which has been registered, or which has been badly packed, or which happens to have an old label upon it. That is under clause 8. This exemption with regard to registered luggage is rather amusing, because under Section 51 of the General Regulations, the company introduced a system of registration. They said that luggage which might be conveyed free of charge could be registered by the traveller, in which case he had to pay the ordinary tariff levied for everything in excess of the amount of luggage allowed to go free. Under Section 54, one would think that if a passenger took the trouble to register his luggage, such registration would guarantee his property being properly and safely put on board the train, and properly and safely removed at his place of destination. But no such guarantee can be relied upon, and it seems to me, after carefully going through these various paragraphs, that it is almost impossible to conceive in what way the company really holds itself liable for loss or damage. Again, under Section B of this Paragraph 24, Sub-section 2, they have a long list of articles for which they are not responsible, such as glassware, light furniture, barometers, thermometers and medicines, and all furniture made of bamboo, straw, or other easily breakable material. As a matter of fact, I submit that a railway carrier is more than an ordinary coach carrier, and is bound to accept everything which is offered to him for carriage.

(*Chairman.*) Not under the terms of "common carriers." If I wish to consign a Gladstone bag containing £10,000 worth of jewellery, or such articles of value or *vertu* as a costly bust or other work of art, what then?

(*Mr. Curlewis.*) I do not think such considerations were contemplated by this clause. The articles mentioned in the clause are such things as light, delicate furniture, crockeryware, glassware, etc.

(*Chairman.*) You have to declare such articles.

(*Mr. Curlewis.*) And even then they do not hold themselves responsible.

(*Chairman.*) No, you must insure them yourself. Does the concession say that they have to carry all goods of whatever kind?

(*Mr. Curlewis.*) Article 90 of the concession states that the concessionaire is bound without favour to carry for every person anything that is offered, with certain definitely fixed exceptions. There is nothing further said.

(*Chairman.*) But they contemplate exceptions which are universal.

(*Mr. Curlewis.*) Take bamboo furniture, for example. If you choose to send it under Section A, by which the company says it takes the responsibility upon itself, and you pay the higher tariff?

(*Chairman.*) I am speaking from memory, but my recollection is that under most civilised railway systems if goods are consigned to the value of over £10 special provisions have to be made for them, and I do not think it is unreasonable.

(*Mr. Curlewis.*) I have no objection to that at all. Anything over the value of £10 must be insured. But I am pointing out that for every bit of furniture worth, say, £5, the company say they are not liable.

(*Chairman.*) Does it not come to this, that these regulations have not the force of law, but practically, owing to the monopoly which this railway exercises over the whole system, traders have to take the regulations, law or no law, otherwise the company can make it very disagreeable for them? There is always this fight at the beginning of railways, that they first try to get rid of all liabilities, but they gradually get worked into line.

Mr. Curlewis referred to Paragraphs 82 and 84 of the General Regulations of the company, and continued: This is one of the great sources of complaint with the mining and mercantile community. Supposing a truck is loaded at Delagoa Bay and is weighed at so much, say 10,000lbs., and at Johannesburg the weight happens to be 15,000lbs., the Netherlands Company fine you treble the amount of the difference, according to Paragraph 84, although the consignee in Johannesburg had absolutely no control over the weighing. He has simply to pay this enormous fine.

(*Mr. Ashmore.*) Do they ever pay it?

(*Mr. Curlewis.*) They won't deliver the goods unless you do pay the fine.

(*Chairman.*) Did they have no remedy from the Delagoa Bay Company?

(*Mr. Curlewis.*) If the consignee attempted to obtain a remedy from the Delagoa Bay people, they would take you, after a long lapse of time, as far as Mozambique, and then possibly, in another ten years, your case might get to Lisbon.

(*Chairman.*) The Portuguese railway authorities, I presume, chose to play into the hands of the Netherlands Railway Company, and mistakes might occur which were possibly connived at.

(*Mr. Curlewis.*) Then under Paragraph 95, should a consignor load a wagon above its stated carrying power and this be discovered, he has, in addition to the treble

fine inflicted under Section 84, to pay an extra sum of £4 per wagon per 50 miles or any portion thereof. If by some accident you happen to find some circumstance or occasion in connection with which the company can be held liable for loss or damage; if you are lucky enough to get the company into a mood to acknowledge their liability, then they have recourse to Paragraph 6, Section 3, on page 939 of this statute book, and they will only pay you at most 4s. per pound weight on baggage and parcels, or any article of value insured; if such baggage or parcels should be sent uninsured, they will only pay at the rate of 2s. 6d. per pound weight. If you choose to send under the higher rate, in which the company takes the responsibility, as, for example, a portmanteau containing clothes, costing £20 or £30, they will say they are only responsible for 4s. per pound weight. But it is very much worse in connection with ordinary goods, for in addition to the high rate should you pay the insurance rate, it is stipulated that you are only entitled to compensation at the rate of 1s. per pound. And moreover, that is the maximum; they may give you less than that even.

(*Mr. Lance.*) I would like to emphasise what Mr. Curlewis has said with regard to our being forced into special contracts. You will see from the statements that I have put in that, compared with the Cape and Natal lines, there is a big difference between the rates, that is as between the normal and the intermediate, both of these being at the company's risk. On the Netherlands line the big difference is between the intermediate and the rough goods, which is the undamageable class, so that we were practically forced into signing this special contract, bringing in all these regulations, and involving an enormous difference in the freight. Reference has been made to the point of it being necessary that special contracts of this nature should be brought to the notice of the consignor. What was the position in Johannesburg? There the whole business of the railway company was conducted in a language which was foreign to the community. Year after year the commercial community urged the Netherlands Company to publish their notices and their tariffs in English. It was not until a month before the war broke out that their tariff was published in English, and even then it was not done officially, but merely by "permission." Now, although a lawyer understands that if a merchant signs a document embodying a special contract he should know what he is doing, and should be prepared to abide by it, still, these notices, etc., were all in a language which this commercial community could not understand, and in the hurry and press of business they were really not aware of the actual import of the documents which they signed. There is this difference in the undamageable rate between the Cape and Natal lines and the Netherlands Railway—that on the Cape and Natal lines it is well understood that this rate meant owners' risk. In the case of a total loss that was not covered by the undamageable rate in the Cape and Natal, but on the Netherlands line the company sought absolute exemption from total loss. With regard to the heavy fines alluded to by Mr. Curlewis, I cannot speak from personal knowledge as to the different scales, but I have a case now pending in which my clients were forced to pay a sum of £120 before they could get delivery of their goods. They had to pay this amount as fines under Clause 84. The goods were weighed at Lourenco Marques and consigned to my clients in Johannesburg according to the duly stated weight. The Netherlands Railway Company found the weight understated, and they imposed these fines, and would not deliver until the penalties were paid. We have now had an action pending for fully a year to recover from the Netherlands the amount so paid in fines. No one, of course, would dream of bringing an action for the recovery of fines unless the amount was a somewhat large one; but my clients thought it worth while to bring this action, not so much because they would gain anything by it as because they considered it their duty to bring the matter into public notice. If the amount in dispute had only been a few pounds, as is so constantly occurring, the merchants would have paid it rather than have the bother of contesting the case. I beg to refer the Commission to pages 104-108 of our Chamber of Commerce report for 1893, which gives a concise summary of these different fines and penalties, and you will see at a glance how objectionable they are. I would like also to bring to your notice the fact that this Netherlands Railway was in no way amenable to public opinion or pressure. The Cape and Natal lines, being Government railways, are more or less subject to such influence, but to expect anything of the sort in the case of the Netherlands Railway would simply be knocking your head against a stone wall. You will see from the reports of the Chamber of Commerce, year after year, the large amount of time spent in contending with this Netherlands Railway on one point and another, and they will show you how utterly impracticable that railway company has been.

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(*Mr. Ashmore.*) When these fines were imposed, did the company not bring forward any kind of plea; did they not allege something by way of justifying their claim?

(*Mr. Lance.*) They simply alleged that in terms of their regulations they were entitled to make these charges. Then, probably, when a case had gone right up to the point of trial, and a merchant had incurred costs to an amount more than the sum involved, the railway company would withdraw, and avoid contesting the thing.

(*Mr. Ashmore.*) The Netherlands Railway have some control over the Portuguese branch?

(*Mr. Lance.*) They have some sort of running powers. It is the Netherlands trucks that are loaded up at Delagoa Bay, but I believe the work is done by the Portuguese; and if any claim arises, the Netherlands say, "Oh, we have nothing to do with what is done at Delagoa Bay; you must prove your claim at Resano Garcia."

PRETORIA-PIETERSBURG RAILWAY CONCESSION.

ALEXANDER SECRETAN, called; and Examined.

Mr. A. Secretan.

1674. (*Chairman.*) You are chairman of the Pretoria-Pietersburg Railway Company?—I am.

1675. And have been familiar with its operations from the first?—Yes.

1676. The concession was originally granted on the 2nd November, 1895, to Mr. Schoeman?—Yes.

1677. Your company was formed and registered, it appears from the memorandum of association, on 13th May, 1896?—Yes.

1678. To acquire this concession?—Yes.

1679. What price was paid to Mr. Schoeman for his concession?—£5,000 in shares.

1680. Virtually complete control and supervision was given to the Government through the Railway Commissioner over the construction of the works?—Yes.

1681. I see you bind yourselves to complete the line for working from the station at Pretoria within a period of two years and six months from the date at which a commencement was made with construction?—Yes.

1682. When did you begin the construction?—The order to commence work was given by the London board on the 6th July, 1896. The official commencement was fixed for 27th April, 1897, by the Railway Commissioner, and various sections up to 133 kil. were completed on 1st July, 1898. A further distance up to 221 kil. was finished on 1st October, 1898, and the end of the rails was reached on 31st May, 1899. There are three sections. Although the works were not fully completed, they were allowed by the Government to open for traffic belonging to the company.

1683. Traffic was working over the line, with a regular train service?—Yes.

1684. The train service began on the 1st July, 1898,

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on the first section?—Yes; that was the only section completed.

1685. When was the whole of the line completed and opened for public traffic?—31st May, 1899, with the exception of a few small works which had still to be carried out, principally signalling. Sufficient money had been retained to finish these works. We had to satisfy Government the line was ready for public traffic.

1686. And this was certified, subject to certain matters, against which the Government retained a portion of the deposit money?—I am sorry to say they still retain it.

1687. How much is that?—I forget the exact amount, but it is in the balance sheet.

1688. What is the mileage of the line?—285 kilos., about 177 miles.

1689. I think under the concession you undertake to build and complete the line for £8,176 per mile?—Yes, these are the terms of the concession.

1690. How has it worked out?—In accordance with a very common practice, we separated the contracts with the contractor for the total mileage. He takes the whole responsibility and provides the company with administration funds.

1691. And if it costs more, that is the contractor's loss?—Yes, it is a very simple form of contract.

1692. There is provision made for the payment of a deposit under section 39 of £40,000?—That was provided by the contractors in terms of the contract. Of that amount the late Government still hold a considerable sum, so the contractors say.

1693. Their liability is to the company always?—Their liability is to the contractors. I have the exact figures here.

1694. I see the Government of the South African Republic are debtors to the company on behalf of the contractors for £15,000, being the balance of the contractors' guarantee deposit?—Yes, it is still in the hands of the late Transvaal Government.

1695. There is an expropriation clause, clause 42, stating that on notice of two years the full amount share capital, together with 7½ per cent. thereon, can be taken over by the Government, who will also pay all the liabilities of the company?—Yes.

1696. And there is a guarantee of the share capital of the company at 4 per cent.?—That is a guarantee of interest only. It is to provide £20,000 per annum by way of interest. The debentures are absolutely guaranteed to the holders. All the bonds are signed by the Government representative. A form of the bond is attached to the trust deed which I can put in.

1697. Do you recollect whether it guarantees interest and principal direct to the holder?—Direct absolutely. When the second issue of debentures was made by Messrs. Schroeder it was sent direct by telegram, and the reply was received.

1698. I see the authorised capital is 500,000 shares, out of which 495,000 have been issued, and 5,000 shares are credited as fully paid up, as provided for in the concession—that makes half a million ordinary shares; what was your debenture issue to be?—One million one hundred thousand.

1699. An article provided for an amount not exceeding one million and one hundred (article No. 14). I see a further amount has been authorised by the Government of £23,500 to pay the costs of the Netherlands Junction, that is not yet issued?—It is not issued yet, because we require the majority of the bond-holders to sanction it, we thought we would leave it until we had a settlement of our claims.

1700. Can you give us the resolution of the Raad authorising this concession?—Yes, There was first a draft contract made by the Government, which was referred to a special Committee of the Raad and amended by that Committee. In its amended form it was submitted to the Raad and gone over section by section, and then it was approved by the Raad as amended in Committee. (*Resolution put in.*)

1701. On the other side of the balance sheet I see the cost of construction and equipment is put down at £1,446,950?—Yes.

1702. Do you know how much of that is construction and how much is equipment?—Yes.

1703. There is an amount expended on working, works and materials which were not included in the materials in addition to the contract?—Yes, merely works and materials which were not included in the contract and have been carried out since. This remains in suspense on the capital expenditure.

1704. I observe that the Government is indebted to you for land compensation. Did you pay land compensation in the first instance?—Yes, and the Government contested certain clauses in the settlement which went to arbitration, and it was given against the Government. The Government had to give us the land free.

1705. They did not in a good many of the concessions do so, but provided that you should make arrangements yourselves?—Yes, the Railway Commissioner always approved of the arrangements, and the amount was put at suspense account until we settled the question of the reading of the clause.

1706. Then it went to arbitration?—There is an arbitration clause, and we went to arbitration as to the meaning of that clause as to who should pay compensation. (*Form of bond put in.*)

1707. Mr. Ashmore figures this out that the cost you are authorised under section 35, sub-section C, was £8,176 per mile, which amounts on the whole extent of the line to £1,447,152. That is for cost of construction and equipment of the line and other expenditure, and is the amount you are authorised to expend, but you have, in point of fact, spent a supplementary capital expenditure to the amount of £5,667. Then what is this £19,290?—That is the junction works, against which we have to issue debentures afterwards, which are authorised by Government.

1708. Have you a resolution of the Raad for that?——

(*Counsel for Concessionaires.*) It is an Executive resolution.

1709. (*Chairman.*) I see in addition to that there is £125,000 odd which has been recovered against you by the contractor, at least, it has not been recovered, but judgment was given against you, therefore, over and above that which you have been authorised to spend upon the line, you have in fact spent £5,667 and £19,290, and you have come under an obligation to pay by judgment £125,635?—Yes.

1710. How do you propose to meet this?—That is a question for settlement. We made a claim against the Government for that £125,000 by arbitration. It represented outlays caused by the Government, and we were in communication with the Government about the question when the war broke out.

1711. There has been no admission either way?—The arbitration has been settled, and an order of the court was issued against the company.

1712. Still there is an allegation by you that they are responsible?—Yes, we can prove it by facts.

(*Mr. Ashmore.*) It makes an excess on your capital expenditure of something like £130,000.

(*Witness.*) If we could get that £125,000 there would not be any excess.

1713. (*Chairman.*) What is the general nature of your allegation against the Government?—That they did everything in their power to stop our works and prevent us from constructing the line by their delay in passing out plans, etc., they increased the cost, and the orders for materials could not be placed.

1714. Do you allege that the Government did so negligently?——

(*Counsel.*) We allege malice.

1715. What motive was there?——

(*Witness.*) First of all there were continuous delays in the passing of plans, and the Raad appointed a Commission to enquire into the delays. Mr. Loveday knows all about it as he was a member of that Commission. The report is printed in book form. We had very good evidence as to why the delay was caused.

1716. (*Mr. Loveday.*) You have evidence over and above any evidence placed before that Commission?—Yes.

1717. (*Chairman.*) You were open for two or three months?—Yes, we were fully open from the 31st May to 13th October, when the Government took possession of the line.

1718. You cannot from your experience of that time when matters were much troubled give any trustworthy estimate of the traffic. I suppose you have traffic estimates apart from that period?—The yearly report was published for the period ending 31st December, 1898, when gross receipts for six months after the opening of a portion of the line were £45,000, and the working expenses were £22.000. The number of passengers carried was 41,000. There was a great deal of native traffic, being labour for the mines, and passenger traffic throughout the works was about 65 per cent. of the receipts. For the six months ending June. 1899, the receipts were £31,000, and the expenditure £25,600, leaving a balance of £5,450. The July receipts were £6,173. August, £6,849, September, £6,591. The receipts for the first thirteen days of October were £9,700, probably due to the return of native labour north, and to the troubles in connection with the war, but there were various other classes of traffic.

1719. Is it a passenger line?—It is at present more a passenger line than anything else.

1720. What are your hopes in the way of goods?—We hope for a considerable increase in tonnage in the shape of agricultural produce, which we encourage, and when the line is extended we hope to carry all the goods north to Rhodesia. It is the shortest route.

1721. At present you have no mineral traffic?—There are one or two properties which they talk about opening up.

1722. Unless it becomes part of the through route do you anticipate paying a dividend on this capital?—I think so. I always thought that when the country opened up and peace is restored the company is bound to pay a dividend. It is a very good country all the way round. We have never worked at a loss yet as you can see even in bad times.

1723. I see you have what I may call a war clause in your concession in almost the same terms as some of the others?—Yes, it is the 32nd clause.

1724. Can you give us an account in your own way of how that was worked between you and the Government in the case of the war?—I think a document which I put in referred briefly to that matter. If you would put the managing director into the box and ask him the question, he will answer better than I can as he was present at the time.

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1725. (*Mr. Ashmore.*) I see that you have on this side of your capital account cost of concession £5.000, and discount on debentures £45.000. After accounting for all your outlay on construction and equipment, Section A Sub-section D of the 35th clause may cover the £45,000, but I do not think it would cover the £5.000?—The Government only authorised such an amount of debentures according to the mileage rate after the amount was put in. We went to arbitration on that point. and the arbitrators held that these shares formed part of the cash contract price, and reduced the debenture issue accordingly, that was part of the contractor's price.

1726. (*Mr. Loveday.*) You contend that the £5,000 paid for the concession was specially approved of under Article 35?—Yes. 495,000 shares were issued and paid for in cash, of which the Government took 300,000.

1727. Who had the possession of these?—The British Government under an order of court in London have taken them.

1728. They have not been disposed of?—Oh. no.

1729. (*Mr. Ashmore.*) The Government did not hold any debentures?—None whatever.

1730. They were held to some extent in Amsterdam?—Yes, the last issue, but the larger proportion in London.

1731. (*Mr. Loveday.*) What is the position of the debenture holders to-day as regards interest?—Interest has not been paid since 30th July, 1899. the debenture coupons due the 1st January were bought and paid for by certain people in Amsterdam. They were held by some bankers it was presumed at the time on behalf of the Transvaal Government. They took the coupons, and have got them still. The actual holders of the coupons have been paid on the 1st January this year.

1732. So that the company is a year in arrears?—That is so.

Mr. Advocate Curlewis intimated that the Chamber of Mines had no objection to this contract, which was not a concession in the sense of being an exclusive right.

HARRY USHER, sworn; and Examined.

1733. (*Chairman.*) You were general manager of the Pretoria-Pietersburg line at the time and before the war broke out?—Yes.

Mr. H. Usher.

1734. I have a letter here, a copy of which you supplied us. Had any communication taken place between you and the Government with regard to the contingency of war?—Not directly between me and the Government, but between the local board and the Government. The Government Railway Commissioner would never recognise me as a person who should communicate with the Government.

1735. Did the local board consist entirely of burghers? The majority of them were.

1735.* You were informed by your local board of what was happening?—Yes.

1736. Have you anything to tell us as to what arrangements were being made?—We took counsel's opinion as to the reading of the clause, and they agreed that the railway must be worked for the Transvaal Government. The Transvaal Government had a right to take possession of the railway and to have it worked for them. The Government wrote to the local board of the company and asked what position would be taken up by the company in the event of hostilities. The local board replied that they would carry out their concession. I was rather of the opinion myself that for some time before the war the object of the Transvaal Government was to get us to make some statement as Englishmen whether we would allow them to break the concession so that if they had broken the concession it would therefore be cancelled. The Government asked us whether the staff would be willing to work for the Transvaal Government. We simply said we should carry out the concession. and the staff would work in accordance with it. We were advised by counsel that we must show the Transvaal Government in order to prevent them from getting us into trouble. that we were willing to carry out that clause. The Government asked us if we were willing to stay, and we said we would, and would carry on in accordance with the concession and we kept it up until the date of the ultimatum. On that date I sent up a train and brought away all the Britishers and sent them away.

1737. Did you leave also?—Yes, I left four days after the war broke out. I sent most of the men away the night before the railway was seized, I waited until Sunday, when I found it necessary to get away.

1738. (*Chairman.*) I think your summary of the letters which passed was quite sufficient. It indicates that you had intimated to the Government that you would carry out the terms of the concession?—Yes, I paid off everybody the day the British agent left. I sent up the heads of departments and informed the men that I would not guarantee their safety. They took the hint, and half the men wanted to leave; I paid them a month's salary and the Britishers left. Those who stayed were burghers, and there were also a few Hollanders, but they ceased to be employed by the company.

1739. Then the Government took over the line?—Yes. (*Letters put in.*) I may add that there were a few small amounts which were not paid to certain men simply through the thing having to be done in such a hurry, travelling expenses, etc., but generally speaking they were all paid off; even Mr. Van Kretschmar represented to me the day before the British agent left, that he did not know what would be done with the Pietersburg Railway.

1740. (*Chairman.*) You regard the concession as containing an obligation upon you to use the railway as carriers for them?—Yes.

1741. Then having put them in the wrong by declaration of war before you had made any refusal you then protested?—Yes.

1742. (*Counsel for Concessionaires.*) On the point of public benefit, can you tell us what kind of passengers you have carried?—Principally natives for the mines. Pietersburg is a great native centre, and most of the passenger traffic is of that nature.

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1743. There are two members of the local board who are representatives of the Transvaal Government?—Yes, they had a majority. I had to use a special power of attorney to take away their powers. One of them expressed an opinion that he could work the railway on behalf of the Government. The day before the railway was seized I went to a public notary and cancelled all their powers, otherwise my protest would have been in vain, and they might have taken action, which might or might not have held good on behalf of the Government.

1744. (*Mr. Loveday.*) These representatives were not elected, but were merely nominated by the London board?—Yes; I had a special resolution from the London board taking away their powers.

RAND CENTRAL ELECTRIC SUPPLY CONCESSION.

(*Mr. Lance.*) I appear for the concessionaires. This contract is word for word the same as that which you had before you yesterday, with the exception that its application is a little wider. Instead of being confined to a group of mines for which specific authority is given, there is power under this agreement to supply other than mines, and under that we supply the Netherlands Railway and the town of Johannesburg with electric power.

(*Chairman.*) That is a very different thing from what we had before us yesterday.

(*Mr. Lance.*) It is different in the respect which I have mentioned, but the contract is word for word the same. The contract is granted under Clause 28 (d) of the Gold Law of 1892. I will put in a translation of that. We have to deal with that clause as it stood in 1892. (*Clause read.*)

1745. Have you a right to lay mains in Johannesburg?—No; we have a right to all Government roadways on proclaimed ground; as a matter of fact, we do not lay them in Johannesburg.

1746. Do you have a right to do so?—Yes; so far as it is Government ground. The municipality lays its own mains, and we supply the municipality with current at a point outside the town. The municipality claim control of the streets, and therefore we do not lay any claim to the exclusive rights, or in fact to rights there at all. We are content with the contract as it stands.

(*Chairman.*) I do not mean to say that you would claim any such right, but you say that it really exists and if it passed into unscrupulous hands that right might be claimed hereafter.

(*Mr. Lance.*) We have agreed with the municipality that we shall deliver to them at a point outside the town. (*Contract put in.*)

(*Mr. Lance.*) This is an English company having its head office in London, therefore we have no board of directors out here, except a purely local board for administration purposes, and a general manager.

C. GORISSEN, called; and Examined.

Mr. C. Gorissen.

1747. (*Chairman.*) I gather that there are no compulsory powers granted to you under your concession—you cannot go upon any land except Government land?—We have only a right to go upon proclaimed goldfields and Government ground over which the Government retains surface rights.

1748. Is there any other company supplying power or energy on the Rand?—Yes, there is the General Electric Power Company.

1749. Is that company of the same kind as yours?—It is a company which supplies the goldfields Consolidated, and also the Rose Deep.

1750. Is that the only one?—As far as I know, it is. There may be arrangements between one or two of the mines, so that one mine supplies another with electric power.

1751. Where is the plan annexed to the concession?—It must be in the Government offices here, but I produce a plan which shows our workings at the present moment. (*Plan put in.*)

1752. Johannesburg is in the district of Pretoria and Heidelberg?—No; it is in the district of Heidelberg only. The actual Government part of Johannesburg is a very small part.

1753. (*Mr. Ashmore.*) This concession would enable this company to carry their mains through the town of Pretoria?—No; through the district of Pretoria. Witwatersrand is a district which lies partly in Pretoria and partly in Heidelberg.

1754. There is 2½ per cent. of the net profits to go to the Government. What payments have you made to the Government?—We always made the minimum payment of £500. I have only been manager since April, 1899, but I have found the receipts of the Government, and also letters showing that the Government inspector came round regularly. Our books are kept in London, but we have our working accounts here, and we get the balance-sheet from London.

1755. You have followed the rule of paying the minimum amount?—We only paid a dividend last year, when we made a profit of £800. The minimum was more than the 2½ per cent. on the profits. (*Balance-sheets put in.*)

1756. (*Mr. Ashmore.*) 8 per cent. dividend was guaranteed by the directors?—Yes; they guaranteed 6 per cent., 8 per cent., and 10 per cent. for the first three years. Siemens and Halske were the contractors.

1757. (*Chairman.*) Have you paid any dividends since the guarantee has been withdrawn?—It ran out on 31st December last year. This is the first year we have worked it ourselves.

1758. You anticipate being able to pay a good dividend in the future?—I hope so.

1759. Was anything paid to the Government for the right?—So far as I know, nothing.

1760. (*Chairman.*) The deed of concession shows £25,000 paid in shares to Siemens and Halske, and £1,000 in cash?—Yes, we have deposited £1,500 with the Government; Edward Lippert received £3,000; and Davis, electrical engineer, £1,000.

1761. Who is Mr. Lippert?—He is a merchant largely interested in the concern, and Mr. Davis is an electrical engineer.

1762. Did they have an interest in the original concession?—I think so; there are two letters which should be read, the one is to supply other persons or corporations besides the mines, and a letter from the State Secretary dated Pretoria, 19th November, 1896.

1763. But where is the Raad resolution authorising that? I understood you purported to be acting under the Gold Law——

(*Mr. Lance.*) We do not claim to have any Raad resolution, but to work under the Gold Law; with the exception of supplying the mines, our works have been erected in the public interests, one to supply the Netherlands Railway, and the other the town of Johannesburg.

(*Witness.*) The Johannesburg town plant is not strong enough to supply the town, and we feed our current into their mains by agreement with them; the same also with the Netherlands Railway. They do the distribution.

1764. (*Mr. Lance.*) (*To Witness.*) The line as far as it is constructed is part of what is authorised under the contract?—Yes; we have the right to extend it as far as Krugersdorp, and the line as it stands, so far as it has been opened, that is, has been approved of by the Government Commissioner.

(*Letters referred to by witness put in.*)

Mr. Hudson intimated that the Chamber of Mines had no objection to this contract.

TRANSVAAL SOAP COMPANY CONCESSION.

(Mr. Steytler on behalf of the concessionaires.)

HENRY WOOLF, called; and Examined.

Mr. H. Woolf.

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1765. Are you managing director of the Transvaal Soap Company?—Yes.

1766. When did the company come into being?—It started about the beginning of 1897, and we started working in the beginning of 1898.

1767. Did you erect a factory, or did you take one over?—We erected a factory.

1768. At what cost?—£2,600; it has been increased a little since then. That is for the building alone, and then for the machinery we spent £2,600. The land cost us £900, fencing and one thing and another £150, nearly £6,500 in all.

1769. When was the last enlargement made of the premises?—During last year. We did not enlarge the premises, but we added certain plant—about £400 worth.

1770. Is that included in the £6,500?—Yes.

1771. At the present moment, what is the capacity of your factory?—Well, we have never worked it up to its full capacity. I think we can turn out what we have undertaken to do under the contract, namely, 2,000,000lbs. weight.

1772. Have you turned out that amount?—We have not had occasion to do so; but the works were completed.

(*Mr. Steytler.*) With reference to the capacity of the company, a letter was addressed on the 26th August to the State Secretary, informing him that the company were now in a position to manufacture 2,000,000lbs. weight of soap required under the contract. (*Letter handed in, together with copy of declaration.*) When the company got to that producing stage, the Executive Council bound themselves to bring forward an extra duty of 3s. 4d., while the company bound itself to produce soap of the same quality as the imported article, so that the present duty of 5s. per 100lbs. was to be increased to 8s. 4d.

(*Witness.*) I should tell the Commission that in 1895 there was a concession for soap, and at my instigation Dr. Leyds cancelled the concession and entered into a preliminary agreement with me, which was published in 1895, and subsequently it was modified into this present one.

1773. Who held that concession?—I do not know who it was.

1774. Was it a Dutch gentleman?—I do not know.

1775. It was a concession for the exclusive right to make soap?—Yes; I got it cancelled. I said to Dr. Leyds, if he would cancel the concession and leave it open, I would start a factory.

1776. Was it not Croxford and Barge?—No; they are very small makers in Johannesburg, or were; they are really vinegar makers.

1777. Nothing has been done to impose the duty which the Government promised they would propose to the Raad?—No; they have not raised the duty. According to this, I had to be in a position to fulfil certain stipulations, namely, to manufacture 2,000,000lbs. weight, and I had to see that the quality was all right. It took me over a year before I was in a position to make the necessary declaration.

1778. Since then nothing has been done?—No.

1779. Do you say that, although the duty were raised, it in no way would affect the public?—They have not raised the duty, but we are bound under our agreement not to sell at a higher price than they could import at the old figure, namely, a duty of 5s.

(*Mr. Steytler.*) That is where the public benefit comes in. The company cannot sell for less than they can import.

1780. Supposing the old state of things had gone on, what is to prevent anybody from building a soap factory?—There is nothing at all; there is no monopoly or concession; anybody might build a soap factory. All I ask is to increase the duty so that industries might be established in the country.

1781. (*Chairman.*) Your industry is founded, and anybody is able, according to your consideration of the agreement, to found another?—If anyone could secure better terms, then, of course, we have to enter into competition.

1782. Well, what do you want done now? What do you want the British Government to do?—I want the British Government to ratify the agreement.

1783. And suppose they do?—It will be a great advantage to the country.

1784. (*Chairman.*) But it is not possible to ratify an agreement by which they shall impose an additional tax?—I do not know about the legal aspect; but I take it the Executive had instructions from the Raad to enter into that agreement.

1785. (*Mr. Loveday.*) In other words, you want a protective duty?—The factory was built under a certain agreement; I want them to keep to that.

1786. What would you do when you got a protective duty?—We are asking for an increase to 8s. 4d. per 100lbs. I have worked under the 5s. duty, and have made a loss. With regard to merchants established here, it is against their interests to support home manufactures, on account of their relations and their commissions from home exporters.

1787. Have you any statistics showing how much soap you have already produced?—Unfortunately I cannot get them in the office, but I shall be able to give you the information from rough figures.

(*Balance-sheet produced.*

(*Witness.*) We have been working very carefully; not one of the directors has taken a penny.

1788. What materials do you use?—The chief ingredients are oils and tallows. We have been using exclusively Colonial tallows.

1789. About the oils?—I have been buying mostly on the East Coast, but I have also been trying to induce people to produce oils in this country.

1790. You say, with a protective duty of nearly 5s. you made a loss?—Yes; but if an extra duty of 3s. 4d. were put on we should come out selling the soap at 1d. per pound.

1791. (*Mr. Steytler.*) And you would be able to produce it at less than it could be imported for?—Oh, yes.

1792. (*Chairman.*) Do you think the inhabitants of this country would approve a protective duty?—It would not raise the price, because we agreed to sell it at the same price, namely, 1s. 6d. per box less than the imported soap. As I have said, it is difficult to induce merchants out here to encourage the sale of home products, because they are supported more or less by London and other European houses.

1793. Is it not more because it is rather difficult to drive trade out of its accustomed channels?—I think the reason I have given is the chief one.

1794. I do not follow it. Why should there be this desire to favour imported articles?—Because the importer has his London house to consider, and the less he imports the less money he makes.

(*Chairman.*) That would not influence me if I were a merchant here.

(*Mr. Steytler.*) The witness means that you would be at the mercy of the people who finance you.

1795. (*Mr. Lance.*) The soap which you produce is what is referred to in the Customs tariff as household or ordinary soap?—It is not perfumed or toilet soap.

1796. What is the duty on that class of soap?—5s.

1797. Is that the whole duty?—Yes, it is 5s., and there is an *ad valorem* duty.

Mr. H. Woolf.

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1798. So that this 5s. is in addition to the *ad valorem* duty?—Yes.

1799. What is the *ad valorem* duty?—7½ per cent.

1800. Do you know how this works out practically? You know that a certain percentage is added to the invoices before the *ad valorem* is put on. Does it not work out at 9 per cent.?—Yes.

1801. So that we have 9 per cent. *ad valorem* duty, plus the ordinary 5s. duty. The whole price of that soap is about 6s. a box of 50lbs., and there is 9 per cent. on that, or 13d. per 100 lbs., plus 8s. 4d. duty, that is a total cost of 2½d. per lb., including the *ad valorem* duty?—The chemicals that we import are subject to the same *ad valorem* duty.

1802. (*Mr. Lance.*) There is an *ad valorem* duty on everything, but there are also these certain special duties, and you now ask for a further duty of 3s. 4d.?—Yes.

1803. Now, in addition to that you are protected to the extent of your inland transport carriage free of cost? No, we have to pay the same as any other importer.

1804. The imported stuff which competes with you has to pay in addition to this Customs duty the cost of the carriage to here?—Yes.

1805. Do you know approximately what that is?—About £7 10s. a ton.

1806. (*Mr. Lance.*) That is about 7s. 6d. per 100 lbs.?—But we have to put the same on our materials.

1807. (*Chairman.*) Do you not obtain any raw materials from the Transvaal?—Very little. Oils and tallow are very scarce. I have bought small parcels occasionally. The rinderpest prevented us from getting the supply of tallow we relied upon.

1808. So that you imported the materials, and put them together?—We obtain them from the Colony, but the chemicals come from the old country. As soon as we are large enough we shall make our own chemicals.

1809. What is the capacity of your works?—We can easily turn out 2,000,000 lbs. weight per annum.

1810. Have you any idea of the total consumption of soap in this country?—Yes; I should say it was considerably more than that.

1811. If I were to say it is close on 5,000,000 lbs. weight do you think I should be far wrong?—No, if you have the statistics.

1812. (*Chairman.*) I have the Customs returns here, and the total amount of soap imported during 1898 of this class was 4,721,650 lbs.?—But I do not reckon to make the whole of the soap necessary for consumption. I hope and expect that there will be competitors, and that alone will keep the price down.

1813. (*Mr. Lance.*) That soap concession to which you referred was one that would expire within a very short time?—I think it had a few years to run.

(*Witness.*) The material used in the soap business is much more far-reaching than some people imagine. From the waste, dynamite glycerine is made, but at present I have to throw it away, because we do not make a sufficient quantity. If this industry were protected three or four others would spring up in the country. I am quite sure from the trial I have made that unless we are permitted to work under this concession, it will be hopeless to continue. If the public had to pay a higher price on account of this extra duty I would not say anything, but we undertake that they shall never pay more than the price at which it can be imported. The only one against whom it strikes is the importer, because he will always fight against local industries and manufactures.

1814. (*Mr. Ashmore.*) At what price do you sell?—12s. 6d. a box, or 3d. a lb., of which 1d. is duty.

Mr. Lance put in a statement of objections to this agreement on behalf of the Johannesburg Chamber of Commerce. *Mr. Lance* also put in Chamber of Commerce report for 1897 referring to the whole Volksraad scheme and list of applications of this clause (page 10), and statement of imports of these different classes of goods on page 47.

ELEVENTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Friday, 19th October, 1900

MEMBERS OF COMMISSION:

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

ALBERTSKROON TRAM CONCESSION (CONTINUED).

19 Oct. 1900.

(*Mr. Dumat.*) May I be allowed an opportunity of making some remarks with reference to the Albertskroon Tram. I wish to state that the blue plan which has been put in is so far as I know a faithful copy of the original. I have been trying to ascertain where the original plan is, but after as rigorous a search as possible it cannot be found. I am certain, however, that it must be in the Government Buildings. I have asked the Registrar of Deeds to explain what was the usual practice in connection with contracts of this nature, and I have ascertained that the Registrar of Deeds satisfied himself that the plan was returned to the Government Commissioner, whereupon the Government issued the necessary documents. Mr. de Wildt is here this morning; he was the technical adviser of the Government on railway matters. He himself has recognised that blue print, and he signed a certificate to the effect that it is a true copy of the original plan referred to in the contract and which has been approved of by the Executive Council.

Mr. Advocate Curlewis intimated that the Chamber of Mines were quite prepared to admit the copy of the plan.

THE ERMELO RAILWAY CONCESSION (CONTINUED).

(*Chairman.*) We were promised some other documents in connection with the Ermelo case.

(*Dr. Lohman.*) They are nearly ready, one has still to be found. We will be able to hand it in to-morrow or Monday. We have traced the resolution of the Executive Council.

J. S. SMIT, called; and Examined (through an interpreter).

1815. (*Chairman.*) You were Railway Commissioner at the time the Ermelo Concession came under consideration?—Yes.

1816. Do you remember if the concession was granted to one Maherry?—Yes.

1817. Can you recollect the details of the concession to Maherry?—Yes, I am more or less acquainted with the details.

1818. Give us your recollection as to what it was?—The concession is in the form of a thick book. I cannot give you the full details, but the contract was made and tenders were called for and the railway was to be constructed in terms of the contract.

1819. Were any terms made with Maherry as to what guarantee of interest there was to be, and the amount of interest to be raised?—Yes, it is in the contract.

1820. Was it so in the first instance?—It was imported subsequently.

1821. When it was imported did Mr. Henderson purchase Maherry's rights?—Yes, I think so. In fact, I am certain.

1822. And Maherry simply had the concession to build a line from Ermelo to Machadodorp?—From Ermelo to a point between Machadodorp and Dalmanutha, that is the point which was subsequently fixed.

1822*. Did the matter come before the Raad when Maherry had the concession or when Mr. Henderson got it?—It was before the Raad long before it was decided to build a line, before anyone had obtained the contract. Subsequently it was before the Raad with regard to the rate of interest.

1823. *Chairman* read the first resolution of the Raad in 1895, and asked, was nothing done upon the resolution of 1895?—I cannot say.

1824. Did you report upon the matter?—Thereupon I made a contract and called for tenders, always subject to the approval of the Government. Two tenders were sent in, one asked for a guarantee of the interest, but Maherry was the only one who did not require a guarantee of interest.

1825. Was the contract given to him on your recommendation?—Yes, it was the only one that was acceptable.

1826. Who was the other tenderer?—I cannot say. There were two persons; I think his name was Burger or Bekker, but I cannot remember names.

1827. Did the Volksraad Commission sit upon your report?—No, I believe the Government dealt with the matter, and the Government resolved on my report in terms of the Volksraad besluit.

1828. (*Mr. Loveday.*) Mr. Smit reported to the Raad every year, and in 1896 he referred to this very line. His report was submitted to the Raad, and the Raad appointed that Commission consisting of Messrs. Niekerk, de Klerk, Delaray, Loveday, and Meyer. I do not think Mr. Smit was quite clear in his reply.

(*Witness.*) I was under the impression that you were asking me about a special report regarding this line.

(*Mr. Loveday.*) I believe that reference was made to this particular line in his annual report.

(*Chairman.*) And on this annual report this Commission was sitting, and made this recommendation.

(*Mr. Loveday.*) This was the report of 1896, and if I read this it will all come back to witness.

Report read by *Mr. Loveday.*

1829. Just up to that point the only authority was for a line from Ermelo to Machadodorp?—Yes, or near that point.

1830. That report was made after certain memorials had been presented?—Yes.

1831. Do you remember when memorials were presented trying to get a change of the destination of the line?—I saw no memorials, but I know certain persons who objected to the line passing over their farms, and I think it is in consequence of that that the route was altered.

1832. The Raad on 7th December, 1896, appears to have considered the memorials and decided to reply to the memorialists that the Raad had already decided to build the line to Machadodorp or in the same neighbourhood, and referred the memorials to the Government?—Yes.

1833. Then there is the further question of guarantee of capital?—That appears also to have been before the Raad, and they decided that they could not take that into consideration at the present time, because the contract for the building had already been completed with the guarantee in accordance with the Raad's resolution.

Mr. Loveday read the resolution in question in the original Dutch.

(*Witness.*) With regard to the first portion of the resolution which has just been read, I asked the Government for the petitions. I knew that petitions had been sent in from people who objected to the line going over their farms. One individual objected, and he was responsible for getting up all the petitions. This line was surveyed to Dalmanutha, and in my report I approved of the proposal that the line should be joined at Dalmanutha.

1834. What authority did you have; what caused you to change that which the Raad had authorised?—The Raad authorised a line and adhered to their resolution, from Ermelo to Machadodorp?—The resolution of the Raad says to Machadodorp or to a point close to Machadodorp, and so I had the line surveyed by the cheapest and shortest route.

1835. How far is Dalmanutha from Machadodorp?—About ten or eleven miles, possibly a little more, but I believe that the line was thereby extended about ten miles.

1836. Can you point out any resolution of the Raad which authorised that deviation?—I do not believe that the Raad authorised it, but the Raad authorised the Government to have the line built, and the Government was entitled to have the junction wherever it liked.

1837. Can you point to any resolution which authorised a change of junction from Machadodorp to Dalmanutha?—In accordance with the Volksraad resolution, the Government instructed me to have the line surveyed. That was the first resolution.

1838. Was there any difficulty at all in taking the line into Machadodorp without going to Dalmanutha?—The difficulty was that the line was thereby made ten miles longer, and the two lines, that is the Ermelo and the Netherlands Railways, were running parallel for a considerable distance, whereas if the junction had been made at Dalmanutha there would be a saving of ten miles of railway line.

1839. Was not the object of the line to connect the goldfields with Delagoa Bay?—Yes.

1840. It is not a fact that Machadodorp is ten or eleven miles nearer to Delagoa Bay than Dalmanutha?—Yes, but over these ten miles the coal which had to be conveyed over the lines and so on to Ermelo line was so much cheaper, whereas the distance to Delagoa Bay remained the same. At this point the witness drew on paper a rough sketch showing the Dalmanutha-Ermelo and Machadodorp lines.

1841. Your point is that you authorised this deviation because the line already existing from Pretoria to Machadodorp would secure an economy of ten miles?—Yes, practically. The line was surveyed by the Government engineer, and I showed him no particular point. I only said to him choose the best point and make the best and lightest line, the easiest to construct.

1842. The line was ultimately made to Machadodorp?—Yes; it was already surveyed to Dalmanutha, and then the Government decided to have the junction at Machadodorp.

1843. The survey had been made by your authority to Dalmanutha?—Yes, and the Raad adhered to the original route and said it never ought to have gone to Dalmanutha, but to Machadodorp. I do not know the particulars.

1844. But the whole policy of the Government rests on the Raad's resolutions, does it not?—Yes.

1845. And there never was any change in the Raad resolution?—No.

1846. It was your idea that it would be more convenient to go to Dalmanutha, but the original resolution of the Raad was never altered. Why was the route ultimately changed to Machadodorp?—This change was made because a certain man objected to the line going over his farm. He came to the Executive Coun-

Mr. J. S. Smit.

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cil and sat and cried about it, so that, contrary to my report, the route was altered.

1847. What authority was there for paying or giving 50,000 shares to the contractors because of that alteration?—The line cost so much more.

1848. What authority was there? Did you ever get any authority yourself?—(Hesitation.) I cannot reply to that question. I had no authority to do it.

1849. Are you aware of any authority being given by anybody?—A new contract was made. The Government did this. They had authority to act in this matter, and action was taken by the Government. Then the new contract was made with the contractors about this time. A condition was introduced in the latter contract that in consideration of the alteration the contractor should receive this amount. You will find all the information in the documents. I cannot go into details.

1850. (*Chairman.*) I have before me the contract signed by you dated 7th October, 1898, and, by article 68, the holder of the concession is bound to form a company, the Ermelo Railway Company, and transfer to the said company the concession *in toto* against a compensation of 50,000 fully paid-up shares in such company. I want to know what authority you had to grant to the syndicate these 50,000 shares?—I do not know which contract you are reading; there are three.

1851. (*Chairman.*) It is the last contract. The authorised capital was £600,000?—Yes.

1852. And the change in question from Dalmanutha to Machadodorp involved the construction of ten or eleven miles more line?—That is so.

1853. Therefore they have got to build a line ten or eleven miles longer than the original intention with 50,000 less capital?—That is so, but please understand this, you must read all the documents. In the second contract which I made, it was clearly stated that neither the company nor the concessionaire should receive anything whatever for the transfer of the concession. We discussed this contract for months, and the concessionaires would not agree to this. They wanted 50,000 shares, until I told them finally that the contract would not be signed. Then they signed the contract under which they got nothing whatever, but afterwards the alteration of the line was approved of by the Government.

1854. What alteration?—The alteration from Dalmanutha to Machadodorp. Then the company sent in a proposal to the Government that if they removed a certain condition which provided that no amount would be paid for the transfer of the concession, they would build the line in this way, and adhere to their original contract. If, on the other hand, they say, the Government would agree to the terms of the contract as suggested, they would not charge anything for the survey of the new portion of the line. Then a contract was made whereby they were to get 50,000 shares. My authority to sign the contract I obtained from the Government contrary to my own opinion.

1855. (*Mr. Loveday.*) The fact remains that the Volksraad always adhered to their first resolution obliging the concessionaire to build direct to Machadodorp, or a point as near that place as possible?—Yes. In my opinion that resolution was complied with by the first survey of the line, viz., to Dalmanutha, which was the nearest, the cheapest, and best point.

1856. Is Mr. Smit aware that the Volksraad afterwards pointed out that he had no right to go to Dalmanutha?—I believe that certain members of the Volksraad said I had no authority to carry the line to Dalmanutha, but, on the other hand, some other members said they could not see that I did not possess this authority because the resolution says I must take the nearest point, and the Government said choose the best and cheapest line. I advocated personally no particular point, but I sent the best engineers, and in association with the company I surveyed the best line possible, as near as possible to Machadodorp.

1857. (*Mr. Loveday.*) I will read the resolution of the Raad to show that the Raad did adhere to their resolution by passing even a further resolution in 1898.

Certain memorials (petitions) were considered by the Raad, together with the Memorial Commission's report. The Memorial Commission's report, which was confirmed by the Raad, reads:—

(Translation.)

Your honourable body has received three memorials—two with 105 signatures, requesting that Article 966 of the Minutes of the Honourable the Volksraad of 1895 be enforced, and one with 86 signatures requesting that Article 1,328 of the Minutes of said Honourable Body of 1897 be enforced, both resolutions having reference to the junction of the line Ermelo-Carolina-Machadodorp at Machadodorp.

Your Commission is of opinion that the request of memorialists rests upon a wrong impression, considering that it is not within the knowledge of your Commission that there is any idea of changing the aforesaid Volksraad resolutions, as quoted, regarding the junction of the line.

(Said resolutions refer to Machadodorp as the junction.)

Mr. Smit will therefore see it was perfectly clear the Raad had no intention that the junction of the line should be at Dalmanutha?—Yes, but according to the original resolution it is also clear that the Raad had not committed itself to Machadodorp.

1858. Was that the nearest point that the line could be brought to Machadodorp?—You might have carried it right up to Machadodorp, but that would have meant running parallel to the other line.

1859. (*Chairman.*) There are no physical difficulties at all?—Oh, yes; there were physical difficulties with regard to the construction of the line. The country is mountainous.

1860. But none which an engineer could have overcome?—It would have made the line very much longer.

1861. (*Mr. Loveday.*) Was it ever brought to the knowledge of the Raad that this change meant giving away 50,000 shares to the concessionaire?—I do not know whether the matter was brought before the Raad by the Government. I believe in my report for 1896 some reference is made to it.

1862. (*Chairman.*) It could not have been 1896, because this only took place in 1898?—I do not think my report for 1897 was dealt with by the Raad. In any case I did not put these matters before the Raad. The Government does this. I simply report to the Government, and they submit it to the Raad.

1863. Did you survey the line before it was opened?—It is not opened now.

1864. Is the line completed?—No, all the earthworks are nearly finished, and that is all.

1865. Do you know the value of the work that has already been done?—I cannot tell you exactly, but I have received reports regularly, and my books will show the amount of work that has been done. There was no loan, but the Government advanced moneys from time to time to provide for construction.

1866. You had the duty of superintending the construction?—Yes.

1867. Did you superintend the construction of the earthworks?—I sent my engineers.

1868. Was one of them Mr. de Wildt?—It was some one from Johannesburg.

1869. Can you find out for us and let us know a little later what the actual value of the work done is approximately?—If I can have access to my books I can tell you at once.

1870. (*Mr. Ashmore.*) Payment was made in proportion to work done upon certificate?—Yes.

1871. (*Chairman.*) Have you surveyed the work up to the present time?—The engineers inspected, made their reports, and payment was made on their certificates. They approved of the work so far as it had been completed.

1872. You can hardly call it payment. The contract provides that no loan shall be concluded by the company until they have actually expended £200,000 capital on the work?—And when they showed me that this amount had been partly spent, the Government wouldn't agree to the loan because the market was bad at that time. Every month they sent in to me an estimate of what they expected to expend approximately. Then they received an advance. At the end of the month they sent in their account. It was examined by my engineer, and the work was paid for, and if any balance remained over it was carried forward to the following month. Then they received another advance.

1873. Why was the Government paying for this?—The Government would not allow the company to raise a loan because the market was bad. Thereupon a plan was devised of making advances to the company.

1874. (*Mr. Ashmore.*) That was debentures, but the original capital they had raised and expended?—When they actually spent £200,000, the Government was either obliged to allow them to issue debentures or to advance them money.

1875. The £200,000 was exclusive of the £50,000 given to the contractors?—Yes.

1876. (*Chairman.*) How much was advanced to the company in this way by the Government?—It is difficult for me to say. I believe the Government themselves subscribed £50,000 cash.

1877. But this is not a subscription, it is an advance. You were taking the place of the market?—The Government were shareholders to the extent of 50,000 shares. That was paid at once, and when they had exceeded this £50,000 then these advances were made.

1878. (*Mr. Ashmore.*) The Government subscribed £50,000 for shares, then 150,000 shares were sold, making £200,000?—Yes.

1879. Then £50,000 was given to the concessionaires?—That is so.

1880. The share capital of the company was £300,000? Where is the other £50,000?—£50,000 was kept in reserve.

1881. But there was £50,000 for the concession; 50,000 shares represented the Government subscription; 150,000 the market subscription and 50,000 in reserve. They spent £200,000, and the Government lent them £50,000. Of course, when the debentures were raised the Government would be refunded their £50,000 at 4 per cent. interest?—I believe that money has actually been spent on construction work.

1882. (*Mr. Loveday.*) In the original concession the capital of the company was to be £600,000 in shares and debentures?—Yes.

1883. Now you say the line was made much shorter?—Yes.

1884. Yet the capital remains the same?—I understand that that remains the maximum capital. If it costs less the capital will be correspondingly less.

1885. But the whole of the articles were changed in order to meet this alteration for connecting the line with Machadodorp instead of with Dalmanutha?—That is so. Yes.

1886. Yet the capital remains the same with the exception that £50,000 was given as a bonus to the syndicate, the syndicate not having anything to do with the company. You see, I could understand their giving 50,000 more shares to the company on account of the line being longer, but what I cannot understand is that 50,000 shares are given away and the capital still remains the same?—I cannot furnish you with any explanation unless I have the contract before me.

1887. Was the building of the line based on so much per mile?—There was no fixed price per mile.

1888. On what was the amount to be expended arrived at?—They had to send in estimates from time to time to show what the line would probably cost, and then the capital would be fixed. I cannot give you explanations in details with regard to the contract.

1889. The fact remains that one line was ten miles longer than the other, and the capital remains the same. That is what I want to get at?—I am not prepared to answer that question at the moment. If I had an opportunity of going through the papers, I might be able to do so.

(*Dr. Lohman.*) With regard to the work done, we hand in a statement through the witness, being an extract from the books, also all the reports of the engineer, who is at present in Europe. We will hand in the original reports. These reports show that the figures not only mean earthworks, but include rails, sleepers, etc., material ordered in Europe.

1890. (*Mr. Loveday.*) (*To Witness.*) Are the earthworks complete?—They are nearly complete.

1891. (*Mr. Ashmore.*) There is an arrangement whereby materials ordered should under certain circumstances be paid for by the Government?—Yes.

(*Dr. Lohman.*) As far as we know, part of the sleepers are stored at present at East London.

At the request of the Commission Dr. Lohman promised to hand in a statement of all the material actually paid for.

JOHANNESBURG CITY AND SUBURBAN TRAMWAY.

Mr. Lance put in the following statement of objections to this concession:—

JOHANNESBURG CITY AND SUBURBAN TRAMWAY CONCESSION.

The Johannesburg Chamber of Commerce objects to this concession as contrary to public interests in that it allows individuals to exploit for profit a service which should belong to the municipality, and that in its working the interests of the public are not sufficiently safeguarded or recognised.

W. F. Lance.

19th October, 1900.

(*Mr. Gilfillan.*) The position I take up on behalf of the Municipality of Johannesburg in connection with this matter is similar to that which I took up as regards the waterworks, viz., that the streets are used by the tram, and that the municipality has no control over them and receives no revenue. The municipality says that the fares are too high, and that the dividend is altogether out of proportion to the profit earned, on account of the fact that the capital has been so largely watered.

Mr. Lance said: "While on the Johannesburg concessions, may I mention two that are held by the municipality itself. I wish to mention these while Mr. Gilfillan is here. The Johannesburg gas and electric concessions were both held by the Johannesburg Lighting Company, and sold by them to the municipality. On behalf of the Chamber of Mines, I object to these being in existence as concessions. We have no objection that proper powers should be granted by means of legislation to deal with these things, and we presume this course they will take, but I mention these concessions to the Commission as being still in existence, and as concessions being objectionable from our point of view.

(*Mr. Gilfillan.*) I understand from Major O'Meara that he has not put these concessions before the Commission as being in the hands of the governing body of the town. It was necessary for the municipality to purchase these concessions with the view of clearing the way to working the public light themselves. They do not absolutely withdraw all their rights, but the municipality includes a great number of private townships, and these private townships have also granted concessions interfering with the rights of the municipality, and the municipality would like to exercise their right as against them. Being a governing body they have never gone into the matter. They paid something like £32,000 to clear away a monopoly.

(*Chairman.*) I do not think we shall go into these municipal matters.

JOHANNESBURG-BOKSBURG TRAMWAY CONCESSION.

(*Chairman.*) (*To Mr. Forster.*) Have you any witnesses here?

(*Mr. Forster.*) I have the solicitor, who can speak mainly as to the facts.

(*Mr. Curlewis.*) Is the concessionaire himself not to be called?

(*Mr. Forster.*) No, I do not call him.

(*Chairman.*) Is he in the country?

(*Mr. Forster.*) He is not.

JOHN HENRY SCRUTTON, called; and Examined.

Mr. J. H. Scrutton.

19 Oct. 1900.

1892. Who are the holders of this concession?—Oscar Scheuermann.

1893. There has been no transfer?—No.

1894. The concession was granted to him on October 15th, 1898?—Yes.

1895. What is the extent of the tram line?—About 14 miles.

1896. That is entirely through the Rand district?—Yes, all along the mines.

1897. Is the tramway available for the carriage of goods as well as passengers?—Only for passengers and their luggage, not to exceed a certain weight.

1898. And animal power was to be employed in the first instance?—Yes, until the Government authorises a change.

1899. What was the consideration for this contract?—The Government was to receive a certain percentage of the profits.

1900. Then there is an ex-propriation clause, twenty times the average value of the net proceeds of the last three years, the minimum being the cost price of the works, and the maximum double the cost price. Is there any authority by resolution of the Raad for the grant?—I have a copy of the resolution of the Executive Council here. It is dated October 13th, 1898, and reads as follows:—

Translation.

Copy Executive Council resolution, Art. 950, dated October 13th, 1898:—

Present:—The State President, J. M. A. Wolmarans, S. W. Burger, P. A. Cronje, J. H. M. Kock.

On the order:—Minute R. 10778/98, U.R. 1080/98, covering correspondence in connection with an application by Mr. O. Scheuermann for a concession for the construction and exploitation of a horse tram from Jeppestown joined on to the existing horse tram there, to Boksburg and Vogelfontein.

The Executive Council having read this correspondence, and having considered the contract relating thereto as contained in the Minute together with advice of the State Attorney and the Head of Public Works; resolves to approve of the draft contract marked A with an addition to Article 35, which article shall read as follows:—"This contract shall make no encroachment upon the exclusive right granted to Mr. Sigmund Neumann (Tram Concession, Johannesburg), and furthermore, no rails or tramways shall be laid or constructed on roads or in streets where tramways have already been constructed or are in course of construction in terms of contracts previously entered into."

The State Secretary is hereby authorised to enter into such contract with the said applicant, and to sign the same on behalf of the Government.

Messrs. J. Wolmarans and S. W. Burger are opposed to the resolution.

No resolution of the Raad was necessary for a horse tram.

1901. You say that requires no resolution of the Raad to authorise this tram?—No.

1902. The Government and the Executive Council had power to grant horse trams.

1903. By what law?—Certain resolutions dating back from 1890. These things could be done without resolutions of the Volksraad.

The following resolutions were referred to by Mr. Forster to show that, by implication, the consent of the Volksraad was not necessary in the case of a tramway with horse power:—

Staats Courant, 28th May, 1890, page 54:—

MINUTES OF THE VOLKSRAAD.

Article 150. At the request of His Honour the President was submitted presently for consideration the following Government missive (VRR 526/90):—

R 7580/90. BB 1972/90.

Government Office, Pretoria, 16 May, 1890.

The Honourable the Chairman of the Honourable the Volksraad, Pretoria.

Honourable Sir,—For your information and for submission to the Honourable Volksraad, I have the honour to submit the following:—

Copy Executive Council resolution, Art. 71, dated 16 May, '90. On the Order: Discussion on the question whether it is possible under the existing law that private persons or companies should construct and exploit on their ground rail or tram ways without the previous consent of the Volksraad, Executive Council, or of the Government.

The Executive Council, considering the desirability that every uncertainty on this question should be removed, resolves to submit to the Honourable Volksraad to determine and to rule—

(1) That no one, be it who it may, shall have the right to construct and exploit within the boundaries of this State railways or tramways, driven by other than animal power, without having first obtained the express consent therefor of the Volksraad or of the Executive Council, or of the Government thereto, authorised by the Volksraad.

(2) That the Government be empowered, with the advice and consent of the Executive Council, to publish such regulations (including penalty regulations) and to take such measures as may be necessary and desirable for the carrying out and maintenance of Resolution No. 1.

Respectfully I request you to cause the herewith annexed minute, R 7580/90, after being dealt with, to be returned to my office.

I have, etc.,
(Signed) Dr. W. J. LEYDS,
State Secretary.

Discussion.

The discussion was closed, and on the proposal of Mr. A. D. W. Wolmarans, seconded by Mr. Botha, Executive Council Resolution, Art. 371, dated 16-5-90, was approved of, with the dissenting votes of Messrs. Paul Mare and De Jager.

Staats Courant, 16th December, 1896, page 865.

MINUTES OF THE FIRST VOLKSRAAD OF THE S.A. REPUBLIC.

Discussion.

Art. 2249.

The First Raad having considered the Executive Council Resolution, Art. 1042, contained in Government missive dated 4th instant, presently under consideration,

Being convinced that by Volksraad Resolution, Art. 150, of 1890, it has been decided that no one may construct rail or tram lines other than driven by animal power, unless with the consent of the Volksraad.

Considering it necessary that permission for the construction and exploitation of all rail and tram ways, other than drawn by animal power, should rest exclusively with the Volksraad and the Raad, and therefore does not consider it desirable to alienate such power.

Resolves not to consent to such Executive Council Resolution.

Staats Courant, 7 July, 1897, page 323.

MINUTES FIRST VOLKSRAAD,

Thursday, 24 June, 1897.

Art. 376.

The First Volksraad having considered Government missive BB 1557/97, containing Executive Council Resolution, Art. 448, of 1897, requesting the confirmation of a certain contract for the construction of an electric tram at Johannesburg, and having considered Volksraad Resolutions, Articles 150 and 592 of 1890, and Art. 2249 of 1896, by which the express consent of the First Volksraad is necessary for the construction of such tram; further, being convinced that by the construction of such tram for the present many a poor person would lose his living,

Resolves not to confirm the said contract.

1904. Have you constructed any portion of this tram?—No. We have handed in a plan, but it has not yet been approved of. This was immediately before the war.

1905. Is there any time limit in your concession?—Yes, under Section 5.

1906. You have to submit plans twelve months after the conferring of the grant. When did you submit plans?—On the 15th September, 1899.

1907. Have they been approved?—No, the war intervened.

(*Mr. Forster.*) There were two or three matters that had to be attended to according to the contract. One was the submission of plans. We had to hand in our plans before the year was out.

(*Witness.*) Yes, and that was done, and a deposit of £500 was handed in for which I have the receipt. Publication in the Government gazette took place on 19th October, 26th October, and 2nd November.

1908. This was all done according to the last clause in the contract?—Yes.

1909. After this contract was completed, there was a suggestion as to an alteration in the direction of the lines. The Main Reef Road was then in construction?—Yes.

1910. What is the Main Reef Road?—It is a road running along the line of reef in close proximity to the companies from Boksburg to Krugersdorp, and it was thought advisable to apply to the Government for leave to run along that Main Reef Road in preference to any other road which we are allowed to use in terms of the contract.

1911. You therefore applied for permission to do so on 26th October to the Government?—Yes.

1912. Why did you need to apply to the Government if you had power to lay rails in the road?——

(*Mr. Forster.*) The road was in course of construction, and the direction had to be by Government, therefore, before going into details of the route, we thought it better to get permission.

Pretoria, 26th October, 1898.

To His Honour, S. J. P. Kruger, State President, and the Honourable Members of the Honourable Executive Council, per J. P. Malan, Esq., Chief of Roads.

Pretoria.

Honourable Gentlemen,—With reference to my contract granted by the Honourable Government for a horse tram between Jeppestown and Boksburg, in connection with the horse tram of Sigismund Neumann, I have the honour hereby to apply for leave to lay the said tram granted to me on the Main Reef Road, now in course of construction by His Honour the Chief of Roads, in so far as this does not infringe on the said horse tram of the said Sigismund Neumann, and only on that portion where no tram is yet running or anyone is busy laying a tram, and that the laying of the rails shall take place under the supervision of His Honour the Chief of Roads.

I have the honour to be, Honourable Gentleman,
Your obedient servant,
O. Scheuermann.
p.p. J. H. Scrutton.

Copy.

R 10,778. P.R. 3793/98. H.P.W. 667/98. Model No. 6.

Department of Public Works,
Pretoria, 8th December, 1898.

Tram Line, Reef Road.

To Mr. Oscar Scheurmann, Johannesburg.

Sir,—I am instructed by the Honourable Government to inform you, in reply to your letter dated the 26th of October, 1898, that the construction of the Tramway and Works, in terms of your contract with the Honourable Government, can be commenced on the Main Reef Road, but the construction must take place as pointed out by His Honour the Chief of Roads, over the berm of the road between the macadamised portion and water furrow.

In the event of others already working on the road, you have no right to prevent it.

Mr. J. H. Scrutton.

19 Oct. 1900.

I may further inform you that your request to be permitted to use electrical power has been refused.

I have the honour to be,
Your obedient servant,
Wierda, Chief of Public Works.

1913. (*Mr. Forster.*) (*To Witness.*) Was the position of the Main Reef Road subsequently pointed out to you?—Yes, on the 9th December, 1898, I wrote to the Chief Inspector of Roads, Mr. Malan, and afterwards we received an intimation from Mr. Malan that Mr. Kentish Moore would point out the part of the road which was to be devoted to our tram. On the 15th December Mr. Moore accompanied myself and the engineer of the company and he pointed out the portion of the road to be used for this tram line through Jeppestown and Boksburg.

1914. (*Chairman.*) Is the road a broad one?—Yes, it is very broad.

1915. Is there room for two trams?—Yes, I should say so, and general traffic also. We were shown that portion of the road which had not been macadamised or made, on the edge next the water furrow. That was the portion assigned to us for the tram.

1916. (*Mr. Forster.*) That was in the end of 1898?—Yes, on 15th December.

1917. Now is this in your opinion a convenience to the public?—Yes, there is a large population and constant traffic. A large number of labouring people and others are constantly going into Johannesburg for purchases. Although there is a railway beyond a very short distance, yet the railway does not always follow along the Reef. It deviates at several points, and leaves employees' residences alone. This tramway would assist them to get to the different railway stations.

1918. With regard to your application for electricity on November 10th, 1898, you made such an application to the Government?—Yes.

1919. The application for the electricity was refused, and therefore nothing turns upon it?

(*Mr. Forster.*) No, except this, that I shall probably make an application at the conclusion of the proceedings. I desire that a note be taken of the fact that such an application had been made. It is the first application for electricity in that particular locality.

1920. (*Mr. Curlewis.*) Do you say the plans were sent in on 15th September, 1899?—Yes.

1921. Are you quite sure as to this correspondence taking place in 1899—for instance, with regard to going on the Main Reef Road?—That was in 1898.

1922. How were the plans sent in?—By letter and handed in personally as well.

1923. Did you do it yourself?—No.

1924. Then how can you say so?—I sent it in by some other person; I sent it in by special messenger to the State Secretary.

(*Mr. Curlewis.*) Our objection to this matter is based chiefly on the fact that the Main Reef Road is a private road. It was constructed under special agreement between the Government and certain mines, and towards which the mines contributed a certain amount of material and cash on the distinct understanding that that road was to remain a private road, and particularly no tram lines were to be built.

(*Chairman.*) Is that agreement in writing?

(*Mr. Curlewis.*) It is in writing on our part. We sent in our consent.

(*Mr. Forster.*) We have no notice of this whatever, and know nothing about this agreement

(*Mr. Curlewis.*) I did not know that they went along the Main Reef Road at all. I beg to submit the printed conditions on which the companies agree to contribute towards making that road. I may state that this road runs over the ground of the mines, and, of course, it is private, and their consent has to be obtained.

(*Chairman.*) Here we have the old controversy again as to whether the Government has any power over these roads.

(*Mr. Curlewis.*) No road, according to the laws of the South African Republic, can be considered to be a public road until such time as it has been proclaimed.

Mr. J. H. Scrutton.

19 Oct. 1900.

(*Chairman.*) And this has not been proclaimed?

(*Mr. Curlewis.*) It has not, and I submit that my clients maintain their rights before the road was made.

(*Chairman.*) How long has it been made;

(*Mr. Curlewis.*) It was begun in 1897, and just to the point of being finished when the war broke out.

(*Chairman.*) There has not been any dedication by the Government?

(*Mr. Curlewis.*) No, on the contrary.

(*Chairman.*) A very good test is on whom rests the obligation to repair.

(*Mr. Curlewis.*) That has been agreed upon.

(*Chairman.*) Were these conditions ever submitted to the Government?

(*Mr. Curlewis.*) Yes, a letter was sent in on the 16th September, 1897, and as the result the Government contributed £25,000 towards the cost of making the road.

Mr. Forster asked if Mr. Curlewis was appearing for the Road Trust.

(*Mr. Curlewis.*) I am appearing on behalf of the Chamber of Mines.

(*Mr. Curlewis* reads conditions as to construction of road.)

(*Chairman.*) Now, about this £25,000. That is an important thing.

(*Mr. Curlewis.*) I will call a witness as to that.

(*Mr. Loveday.*) The mines also contributed?

(*Mr. Curlewis.*) The mines contributed a third cash and material as against the Government's two-thirds.

(*Chairman.*) The effect of the proclamation would be that it shall become a public road subject to these conditions, and it is not a public road yet.

(*Mr. Curlewis.*) I can also prove that when the Liquor Law of 1898 was passed, which provided for granting licenses along public roads, the Road Trust sent a deputation to the Government, and got the Government to acknowledge their rights over this road by specially stating in that Liquor Law that this road shall not be considered a road in respect of which the ordinary provisions of the law should exist. No licenses could be granted for a canteen along this road.

(*Mr. Loveday.*) Article 16 of this concession states that this contract shall be published three times in the Staats Courant. When the Road Trust saw this contract published did it make any objection?

(*Mr. Curlewis.*) I do not believe they did so immediately, but subsequently there was considerable correspondence with the Inspector of Roads on the subject. As published here there is nothing to show that the tram would go over the Main Reef Road. This agreement was never brought to our knowledge. It looks pretty harmless on the face of it, because one naturally concludes that Government roads are main roads, and not private roads.

(*Mr. Loveday.*) There was nothing to show what course this road would take.

1925. (*Mr. Ashmore.*) (*To Witness.*) There are other roads by which your tramway might have gone?——

(*Mr. Curlewis.*) That is possible from their request.

(*Witness.*) There is an old disused road on which it might go.

1926. (*Mr. Curlewis.*) The terminus of the Jeppestown tram is far removed from the Main Reef Road?—I beg to differ; it is within five yards of the Main Reef Road.

(*Chairman.*) The utmost you can show is that a letter was written by you to the Government, without notice to the persons affected, with regard to a road which was not even then completed. That letter was written by you asking for leave to go along this particular road, and assent was given by the Government without notice to any parties at that time. The road was not proclaimed.

(*Witness.*) In the case of a proclaimed goldfield the claimholders have no surface right.

1927. (*Mr. Curlewis.*) He is referring to mynpachts, mining leases. Claimholders have only the right to the minerals. There are portions of a farm which are private property, and it is distinctly stated in Article 3 that should the consent of private persons be required for the construction of a road, a contractor shall be obliged to obtain it. (*To Witness.*) Did you get the consent of any private owners over whose property the Main Reef Road goes?—The tram goes over no private person's property—it goes over proclaimed ground all the way.

1928. Proclaimed ground does not mean public ground?—The public have access to it.

1929. Yes, for prospecting purposes?—You know well enough that the Main Reef Road runs over public property.

1930. I know it is proclaimed ground for mining purposes and prospecting. According to the law of this country, when a farm is proclaimed, the ownership of that farm remains in the proprietor. He is not divested of any of his rights except for purposes of mining and prospecting. Therefore, you know it runs over certain farms?—Yes, proclaimed ground.

1931. Have you got the consent of the owners of these farms?—We have not the consent of the owners, but diagrams were filed, and the engineer of the Road Trust pointed out the part of the road which was to be devoted to us.

(*Mr. Curlewis.*) The other side could not possibly say no when we had no notice of it.

1932. (*Mr. Loveday.*) When was this?—Mr. Kentish Moore went over the ground and pointed out the road on the 15th December, 1898.

1933. And you sent in your plans in September, 1899, just before hostilities commenced?—

(*Mr. Ashmore.*) Mr. Kentish Moore was a servant of the Government?

(*Mr. Kentish Moore.*) I was spending Government money to the extent of about £50,000, and mining money to the extent of £30,000, both parties mutually agreed as to my appointment. I was not paid a salary, but I received a retaining fee of £1 per diem from the Government. I was joint engineer, and therefore on instruction from the head of the road department I showed this gentleman how this road was to be carried out.

1934. And did you point out the part of the road?—Yes.

1935. Why did you do that, if you were aware that this was claimed to be a private road?—

1936. (*Mr. Forster.*) I do not think you quite catch the point. (*To Mr. Moore.*) What Mr. Scrutton says is that you were then in connection with the Government and the mines, and that you pointed out to him in 1898 a portion of this private road which was to be used for his tram; did you do so?—Yes.

1937. (*Chairman.*) Why?—Under instructions from the head of the road department.

1938. Who was he?—A man called Malan.

1939. Were you fully acquainted with the provisions of that agreement?—Certainly.

1940. Why did you not point out to Mr. Scrutton, when you were showing him the place, the terms of that agreement?—So far as I knew, it was public property. I am certain I mentioned the matter that this was considered by the mines to be a private road.

(*Chairman.*) What you were doing was something that was absolutely foolish and nonsensical, viz., pointing out a place where his tram could go, which you knew perfectly well he had no right to lay.

(*Mr. Moore.*) Before this was done I mentioned the matter to the Chairman, and he said there was no objection.

1941. Who was your Chairman?—Mr. Bikenruth.

(*Mr. Scrutton.*) Mr. Moore says he thinks he mentioned it at the time, viz., this condition as to its being a private road. I am positive that very few of the public were aware of that. I certainly did not know, and it is only lately that my people were aware that such a body as the Road Trust existed, and I have only recently discovered that they claimed a right to exclude trams from that road. I am certain that nine people out of ten will bear me out in this. It was deemed a good agreement, and the Government went about it in an underhand way without letting the public know.

Mr. KENTISH MOORE, called; and Examined.

1942. (*Mr. Curlewis.*) The Government, before proceeding with this work, wrote to the Road Trust, and stated that it was necessary to proclaim that road a public road, or else they would not contribute towards its construction?—Yes; but subject to these conditions, which were signed, and they were to be embodied in the proclamation proclaiming this a public road.

1943. Are you aware of that correspondence?—Certainly.

1944. Will you state to the Commission how the Road Trust came to construct this road?—Some portions of this road ran over ground which is distinctly considered to be private property or mynpachts. Whenever a road goes into a mining area it will very materially interfere with mining, which is a great inconvenience. We could not get the mining law altered in a hurry, and an arrangement was suggested to the Government that the road should be made, and the mines would agree to its proclamation as soon as the undermining rights had been satisfactorily agreed to. They are peculiar rights, especially connected with railways and tramways. As the mining law could not be altered without due notice being given, a temporary arrangement was made that, if they handed over whatever rights they had to the Government, then the Government would protect them, with reference to the granting of any tram line along the road. There are certain sections of the road which are not on mining property, and there are certain portions which are on mynpacht. Undoubtedly the surface rights belong to the Government on all other mining ground, but the under mining right is seriously interfered with. On the 7th August, 1897, the Chief Inspector of Roads wrote asking that private individuals concerned should agree to hand over the land to the Government for the proclamation of the road. The agreement was drawn up and sent to every mining board consisting of from five to ten men along the Reef Road. It was looked upon as a public document. Copies were in Pretoria, and all the plans were published and everything done to give it the required publicity. But for various reasons it was always a difficult thing to get the Volksraad to move definitely or promptly. Various details had to be settled. The mines were willing to hand the road over, but the proclamation has been postponed from time to time, with the result that the Government have spent over £50,000 in cash, materials, etc., and the mines have spent in cash and materials about £30,000. The mines were just in the same position as before. In the meantime, not being proclaimed, the road is a private road.

(*Mr. Moore* intimated that he would hand in a copy of his statement on the subject.)

1945. (*Mr. Curlewis.*) (*To Witness.*) Were you in correspondence frequently with the chief inspector of roads?—The secretary generally corresponded on all matters except construction.

1946. Do you know if any letter was received from the chief inspector of roads in September, 1897, with regard to this Main Reef Road?—There was one on August 7 and one later, in September, asking for plans. I have one letter dated August 7th, 1897, with regard to making this a public road. (*Letter put in.*)

1947. Now what did you do thereupon?—I informed him that this agreement had been sent out and enclosed a copy. I stated that the mines were prepared to pay up the money contingent on these conditions being introduced.

1948. As a matter of fact you sent in plans and documents and a copy of these conditions on behalf of the Road Trust?—Yes.

1949. You did not get any acknowledgment? What happened? Did the Government act on these conditions?—Yes. I must tell the Commission that the road had actually been begun in a piecemeal way by the Prison Department, but as the result of these letters sent in when the mines intimated that they were prepared to agree to the proclamation a large sum was voted by the Government, £5,000. The construction was being carried on by means of relief works, and therefore it went through without the proper formalities. This £5,000 was devoted in December, and in March of the following year the road was seriously commenced. When I went home in April last year, the mines had put up £15,000 cash, and they had supplied £15,000 worth of material.

1950. (*Chairman.*) Both these large sums of money were paid without any definite understanding as to the terms?—Well, we got the road, and if you saw any of the Rand roads, I think you would admit that this is a valuable undertaking.

Mr. K. Moore.
19 Oct. 1900.

Mr. Curlewis submitted a letter dated 29th December, 1898, pointing to Clause 1 of the conditions, whereby it was provided that no rights for the construction of tramway lines over the Main Reef Road should be given without the consent of the companies, or without the board of the Road Trust being consulted. Mr. Curlewis said: "What I wish to prove through this witness is that the Government could not advance money until they got the consent of the owners that this road should be proclaimed a public road."

1951. (*Chairman.*) (*To Witness.*) You are satisfied that these conditions went round to all the mines, and that signatures were got to them from all the mines?—Yes, in September, 1897.

(*Minute Book of Road Trust produced.*)

1952. (*Mr. Forster.*) Do I understand the position to be this, that the mines subscribed the money and paid it by instalments, or did they pay up the sum of £15,000 at once to the Government?—The mines practically agreed to find everything except wages for unskilled labour and cement. These were to be supplied by the Government, who were paying for relief labour and prison labour. The mines were to supply a complete set of steam rollers and all the skilled labour, which they did. They were to pay the whole engineer staff, which they did, and they were to provide all carriages and everything else required for the staff to do their duty. They were also to provide the surveying instruments. Proper account books have been kept, and the net result was that somewhere about £15,000 was paid on that arrangement.

1953. Was this money paid in a sum or by instalments?—The mines promised to subscribe so much a month, and it was paid in monthly instalments.

1954. To the Government?—No, to the Road Trust.

1955. The Road Trust paid out month by month?—Yes.

1956. Was there any protest sent in to the Government, or any reply received with regard to entering into this contract?—I do not think any further letter was sent in.

1957. And still the Road Trust kept paying out, and the Government neglected to enter into an agreement?—It was not paid out in a lump sum, but was spread over monthly payments.

1958. No other request has been made to the Government to sign this contract?—Certainly.

(*Chairman.*) His point is that the boot is on the other leg. Until the road is proclaimed by the Government it is private property.

(*Mr. Forster.*) I want to get at some reason why this money was paid out if there was no agreement with the Government.

(*Chairman.*) They wanted the road.

1959. (*Mr. Forster.*) (*To Witness.*) Did all the mines along that road subscribe?—I believe I am right in saying that every mine has put up some money from time to time.

1960. They mostly belonged to groups, these mines, do they not. There are something like 22 mines along there, and they may be divided up between the Ecksteins; the Gold Fields, George Farrar, and Albu?—I understand perfectly well what you mean.

1961. It is so, is it not? The mines along that Reef Road belong mainly, if not entirely to the groups I have mentioned?—The Reef Road runs wherever you can get it along the out crop. I really do not understand the question. It is practically the entire Rand. There are not only these four, but there are other groups.

1962. What others?—The Robinson, the Barnato, the Neuman, and the Langlaagte Estate.

1963. I am speaking of the district between Johannesburg and Boksburg?—That would be true with reference to that side.

Mr. K. Moore.
19 Oct. 1900.

1964. Is not what I say correct, and the deep levels are nearly all in the hands of the Ecksteins?—I have heard so, but I really do not know.

1965. Also is it not a fact that the Port Elizabeth tramways and the Cape Town tramways are in the hands of the Ecksteins?——

(*Chairman.*) That is a long way off.

1966. (*Mr. Forster.*) We will go to another point. What position did you actually hold in the Road Trust?—I was managing director, and I was joint engineer of the Road Trust for the Government.

1967. You were a Government servant?—No, I was consultant.

1968. You wrote that letter after this contract was signed by the Chief Inspector of Roads on 21st November, 1896?—What letter are you referring to. Oh, yes, I remember.

1969. Did you write that letter in Dutch or English?—In English.

1970. I will read to you what you said. You are well aware that at that time that the Tramway Company had made an application for permission to lay a tramway on this Main Reef Road, and your answer to that was as follows:—

To Head of Roads,
per Inspector Reef Road,
Plans Reef Road.

No complete plans of the Reef Road are at present in existence, because so many small alterations were made in the original plans. Before proper plans can be supplied the whole road will have to be surveyed afresh, but that will cost about £100. The following information will, I believe, be sufficient for the purpose of Mr. Scheuermann:—

No. 1 Portion.—This is more or less between 13 and 14 miles; this depends upon the distances of the two termini.

2.—Smallest curve, 400 feet radius.

3.—Greatest incline 1-20.

4.—Article 13 of the contract. Here I must most strongly recommend that this article be altered so that the contractor must lay the line not in the middle of the road, but along the side, and not on the macadam. The Head of Roads will recollect that the trenches along the road are 100 feet apart, and there is only 40 feet of macadam in the middle, leaving thus generally 30 feet on both sides of the macadam for such purposes. For the road and the contractor it will be cheapest not to lay the line on the macadam.

5.—I must also direct your attention to the fact that by allowing the use of the Reef Road the Government makes a present to the contractor of at least £20,000, since when the Reef Road is completed the contractor will have nothing further to do than to lay the rails and ballast the line. The handing over of 5 per cent. of the net profits is surely not enough for said present.

6.—Proclamation of the Reef Road. The Reef Road is also not yet a proclaimed road.

7.—The mining regulations with regard to railway or tramlines running over worked-out ground are very strict. These regulations demand that the ground underneath the line cannot be worked out, and if they are enforced all the works of certain mines will be stopped in some cases.

8.—Road Trust Company. The Road Trust Company, which represents the mines, has, in accordance with an agreement with the Government, collected £20,000, which sum has been nearly spent. As managing director of the Road Trust, I am of opinion that the matter ought to be submitted to the directors of the Road Trust for approval, especially as regards the mining regulations.

KENTISH MOORE,
Engineer.

Johannesburg, 21st November, 1898.

A true translation.
(Signed) ANDREW S. ROOS,
Sworn Translator.

That letter was addressed to the Head of the Public Works?—Yes, but that is simply the letter of an engineer.

1971. You remember having a conversation with Mr. Goldman with regard to this particular tram?—Yes.

1972. You also had a tram undertaking in view?—Yes.

1973. That was the Albertskroon steam tram, and you suggested that it would be a good thing to combine?—Oh, yes; if it were possible.

(*Mr. Curlewis.*) It is in evidence that the road is not proclaimed.

(*Mr. Forster.*) It is not proclaimed *de facto*, but my case will be that the proclamation of the road does not affect this concession at all.

(*Mr. Curlewis.*) I will ask the favour of the Commission to grant me the same privilege that was granted to Mr. Lance to put in a statement, signed by a witness who will be prepared to swear to the facts before the Commission if necessary.

(*Chairman.*) We accept the letters, but we do not accept the statement. The question at issue is a very plain one indeed. It is simply this—is this road a private road, and has any agreement been made with the Government with regard to its proclamation. On this point Mr. Kentish Moore has helped us considerably, and has shown plainly that the Government never expressly assented to these terms. The only question is whether this is a private road.

TWELFTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Monday, 22nd October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY

Mr. BERNARD HOLLAND, *Secretary*

THE DYNAMITE CONCESSION (CONTINUED).

LAMBERTUS GERHARDUS VORSTMAN, sworn; and Examined.

1974. (*Chairman.*) I think you are vice-chairman of the Dynamite Company, and you have been connected with the trade in dynamite in the Transvaal since when?—1891.

1975. How long were you in the Transvaal before 1891?—Ten years; since 1881.

1976. When did you first have any relations with those who were producing dynamite here?—In 1891.

1977. Had you any connection with Mr. Lippert?—I was then one of the general managers of the Netherlands Bank, and as such I became a director of the company of which Mr. Lippert was the general agent for the selling of dynamite. Mr. Lippert was only selling agent, and had nothing to do with the direction of the company.

1978. Mr. Lippert was the original concessionaire?—Yes.

1979. Were you acquainted with Dr. Leyds and President Kruger at that time, in 1891?—Yes, with Dr. Leyds especially.

1980. When did you become acquainted with Mr. Lippert?—About two years before that. I had some business with him in 1889.

1981. Had you any knowledge at all of the dynamite trade or manufacture?—None at all.

1982. In what respect did you become associated with Mr. Lippert in this trade?—The Netherlands Bank was trustee for some of the shareholders in Europe, and as I was one of the managers of the bank, I became a director of the Dynamite Company.

1983. When did Mr. Lippert get rid of the concession, and to whom did he assign it?—To a company in Paris called the Société Generale de Paris. This was a company entirely composed of French shareholders. I think there were some shareholders in Holland, too.

1984. And you were the managing director of the company?—I was the managing director, and had a vote on the directorate.

1985. And Lippert was the selling agent?—Yes.

1986. As a director of that company, were you aware of remonstrances made against its existence by the German and English Governments?—I was.

1987. The English Government alleged that the existence of this company was a breach of the London Convention?—They did.

1988. And after a time these remonstrances prevailed, and the concession was cancelled?—Yes.

1989. Were you aware of the annoyance felt in France at the cancellation, and were representations made to the Transvaal Government on the subject?—Representations were made by the French Consul here to the Government, and protests were lodged against the cancellation.

1990. Were these protests dropped somewhere about the 20th October, 1893?—They were withdrawn on the company withdrawing all claims they pretended they had against the Government for cancelling the contract.

1991. Who pretended they had no right to cancel?—The company.

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1992. The French company asserted that the Government of the Transvaal had no right to cancel the contract with the company. Then the company undertook to withdraw all these claims on a different arrangement being made?—Yes.

1993. And one of the first steps in that arrangement was a contract made with you?—Yes.

1994. This contract is dated 25th October, 1893?—Yes.

1995. The contract has been put in?—Yes.

(*Mr. Rooth.*) I have not put in the documents upon which the company bases its title. The contract is dated May, 1894.

1996. (*Chairman.*) (*To witness.*) Before making that contract dated 25th October, 1893, what arrangements had you with the representatives of the old company—the French company?—Another director came out from Paris, and the two of us dealt with the circumstances as we thought best. We approached the Government, and said we heard they were going to make the trade in explosives a State monopoly, and were going to be represented by an agent, and we applied for the agency. Under the circumstances we were prepared to withdraw our claims. No arrangements were made then. Before anything was done we applied to the Government for the agency.

1997. That is the French company?—Yes.

1998. Was that refused or not?—Well, I understand that it was intimated that the Government was prepared to give it to me personally.

1999. When you entered into this contract were you satisfied by the Government that the French company would ultimately share in its benefits?—It was understood that the shareholders in the company would not suffer. It was fully discussed by the Government.

2000. What right had the French company to any consideration in the matter when their contract had been cancelled?—The Government pretended that the Lippert contract had not been fulfilled, and under that contract it is said that any dispute should be settled by arbitration.

2001. But the Government had cancelled the contract?—Yes, and in the meantime we went on until this matter was settled.

2002. Do you adhere to what you said just now, that the French company contract was, in point of fact, cancelled?—The Government always alleged that it was cancelled.

2003. And the Government were the people who had the power?—We maintained that they had no right to cancel without going to arbitration.

2004. Had any agreement been made by you with Lippert before the contract of October, 1893?—Under the old contract Lippert had a very large share in the

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business, and when there was a likelihood that I should get the agency I proposed to him that he should considerably reduce his commission.

2005. What right had Lippert? His contract had been cancelled and the French contract had been cancelled; they had no contract with the Government whatever?—Lippert had nothing to do with the Government; he sold his right to the company.

2006. What was his contract with the company?—That he should be the sole selling agent.

2007. But having no rights at all at this time, did you make any bargain with him before your contract of October 25th, 1893?—Yes, I did.

2008. Was that embodied in the contract of August 25th, 1893? What contract was that?—We had correspondence on the matter, and in that correspondence Lippert agreed to a reduction in the selling commission.

2009. That was a reduction of the selling commission when the French company had ceased to exist?—That was the view the Government took.

2010. What bargain was made between you and Lippert, if any?—Lippert at that time was receiving 12½ per cent. commission from the French company, and I told him if I got the agency I should want him to reduce his commission considerably, and I reduced it to 7½ per cent. instead of 12½ per cent.

2011. You assumed that you were going to continue the relations with Lippert which the French company had, but on a reduced basis?—Yes.

2012. Did you bring that fact of the arrangement you had made with Lippert to the knowledge of the Government?—I did not do it personally because I went to Europe. But Mr. Jorissen wrote a letter to the Government enclosing copy of an arrangement made with Lippert.

2013. Have you a copy of the arrangement you made with Lippert and of the letter that was written?—Yes, I have.

(*Mr. Rooth.*) I have the letter which Mr. Jorissen sent (*letter put in*).

Mr. Van Hulsteyn remarked that the letter and agreement, as well as other important documents, were all in the compendium.

2014. (*Chairman.*) (*To Witness.*) This bargain, having been made with Lippert before the 25th October, 1893, was communicated to the Government on the 20th January, 1394, according to a letter which has been put in?—Yes.

2015. It therefore follows that the Government had a knowledge of the bargain that you had with Lippert?—Yes.

2016. Did you also inform them as to the bargain you had made with the French company?—No bargain was made yet, before the 25th October, 1893. It was left entirely to myself, and I formed the company. The Government fully knew that the shareholders of the French company should not suffer by cancelling the agreement.

2017. When you say they fully knew, how did they know? Did you tell them?—Dr. Leyds and President Kruger knew, and the President himself said that the shareholders should not suffer.

2018. Although the contract was cancelled outwardly by the Government, both Lippert and the French Company had assurances from the Government which would render the cancellation harmless to them?—Yes.

2019. Meantime on the 25th October, 1893, this contract was entered into by you with the Government, purporting to be pursuant to the Raad regulations shortly before that date?—Yes.

2020. In these Raad regulations I presume nothing is to be found with regard to Lippert or the French company?—No, but the regulations left it to the Government to make such arrangements they might think fit.

2021. Did you, or anybody representing you, or the French Company or Lippert, ever convey to the Raad information that although the contract had been cancelled they were going to be placed in a beneficial position under the new arrangement?—Nobody had an opportunity of communicating with the Raad. We could only communicate with the Government.

2022. The present company was formed on February 26th, 1894, was it not?—No, the company was formed later, in June. I made a contract in October with the Government. Then I went to Europe. It then appeared that this contract could not very well be accepted, and the Government wished some alterations to the new contract made on the 24th May. Before that there were arrangements to float the South African Explosives Company. This we made in February, 1894. There was a contract made between the promoters and the old company.

(*Contract put in by Mr. Rooth.*)

2023. That was a contract by which you, as representing yourself and as representing the French company and Nobel and Company, were agreeing to float the South African Explosives Company?—Quite so.

2024. And that arrangement was put into effect later on, I think in June, 1894?—Yes.

2025. When that company was formed, did it not consist of a German group, Nobel and Company?—It was an Anglo-German group.

(*Mr. Van Hulsteyn handed in the Articles of Association.*)

2026. The head office is nominally in South Africa?—Yes, the head office was in Pretoria.

2027. There was a European office in Hamburg?—Yes.

2028. And the South African branch—if I may call it so—in Pretoria consisted of how many directors?—Five directors.

2029. And the directorate in Hamburg consisted of how many?—Eleven or twelve; they were always changing. It was said that the maximum should be seventeen, but at that time there were twelve, I think.

2030. Provision was made that the directorate in Europe should have absolute control and dominion over the South African Board?—Yes.

2031. And did the European Board consist at that time entirely or partially of directors resident in Europe?—Yes, entirely.

2032. Mr. Max A. Philipp was Chairman at that time?—Yes.

2033. And the larger proportion of the directors were German, a proportion something like from nine to twelve Germans to three or four Englishmen?—I cannot exactly say.

2034. You held a position on the Board in South Africa?—Yes, I was vice-chairman, along with Mr. Alberto Philipp. Mr. Philipp represented the company with full power in my absence, but if we were both here we worked together.

2035. When you were both in South Africa all matters of any importance whatever, whether of policy or otherwise, would be arranged between you. You would consult each other on each point?—Yes, we generally did so.

2036. Now, in addition to the Pretoria Board being made absolutely subservient to the European Board, were you also compellable under the Articles of Association to obtain all plant, machinery, and manufactured articles from Nobel's in Germany?—Yes.

2037. As a fact, was everything that you had and used for the purpose of your undertaking in South Africa purchased from Germany and manufactured there?—It need not be manufactured in Germany; in fact, we got a lot of things in England, such as different parts of machinery.

2038. But that was only done at the good-will of the European Board. You were bound to purchase in the first instance from them, and if they made arrangements whereby you obtained machinery elsewhere that was by their permission?—They bought themselves in the best market.

2039-40. And everything that was sent to you, whether from other manufacturers or not, was sent through Nobels'?—Yes, through the Dynamite Company in Hamburg.

2041. Therefore you have an obligation to purchase everything you require for your undertaking through Nobel and Company, and you are subject to the absolute control of the Board resident in Hamburg?—Yes.

2042. What was the capital of the company?—450,000—£1 shares.

2043. Then the first issue of shares to the registered members of the French Company was £182,500 fully paid up?—That is so.

2044. And to Lippert as per agreement 25th August, 1893, 25,000 fully paid up shares?—Yes.

2045-46. And to Dr. Gobert, Hamburg, for services rendered, 22,500 fully paid up shares?—Yes.

2047. That accounts for 230,000 fully paid up shares. Then I see to the underwriters at 220,000 shares, £41,198. What was that—was that commission?—That I cannot tell you. I only know about the 182,000, and 25,000 fully paid up shares.

2048. Can you not explain this £41,000?—I cannot. I think one of the other witnesses will be able to explain it.

2049. Then there is £67,000 to Hydeman and Nobel's Explosive Company, Glasgow; £50,400 and £35,000 to Nobel's Company, Hamburg, and three other German manufacturing companies. These were all the German group, and all in close relationship with the parent company of Nobels?—They are.

2050. These figures make up, subject to this explanation, £450,000?—I understand now what you mean. I suppose you are referring to the list appended to the articles of association. These were the first shareholders in order to comply with the law of limited liability.

2051. (*Chairman.*) You mean that these were only nominal people, but you would not apply that term to the underwriters, who receive close upon £42,000, according to the account I have before me. They are not the first shareholders?—That I cannot explain.

2052. With regard to the 182,000 fully paid up shares to the French Company, were they paid pursuant to the arrangement of which you have already spoken?—Yes.

2053. They at that time being merely the owners of a cancelled contract?—Well, I think they had a little more influence when I went to Europe in 1893, and had then the agency for the State monopoly which I took in my name, and I agreed to give it unencumbered to the old company. I never acted on my own account.

2054. Where would you have been if that had been disclosed to the outer world? What about the protests of the English and German Governments. What would have happened if you had explained or made public the fact that you were replacing the French Company in precisely the same position as a going concern when their contract was cancelled?—My contention was that they had no right to cancel the old contract unless something else was given for it.

2055. But it was not in your hand?—We as the old company contended that they had no right to cancel it.

2056. I understand that, but notwithstanding there was an assignment of 182,000 fully paid-up shares to the French Company, and there is also an assignment to Lippert of 25,000 shares?—Quite so.

2057. Well, then will you state in your own way what consideration had the French Company or Lippert given to the new company for the assignment to them of these £200,000 fully paid-up shares?—Do you mean the 182,000?

2058. Yes, and the 25,000 to Lippert. What passed from Lippert or the French Company to the new company in consideration for their receiving these enormous sums. I would like that question dealt with. The French Company received 182,000 plus 25,000 fully paid up shares, and I want to know what the company got. Was the plant and the factory worth the sum I have stated?—I do not know about the plant, but it was in the country, and had been used.

2059. I quite accept that, if the contract had been subsisting, and had the plant and goodwill been of any value as a going concern, but the contract was cancelled, and they practically had no goodwill?—At all events, they had the agency.

2060. Who had?—The old company.

2061. But I am speaking about the new company. You had a contract no doubt on the 23rd of October, and that was made over to the new company, and they paid for it. Now here are all these shares to Dr. Gobert, Hamburg, and others, amounting to this large number?—Negotiations took place in Europe when I was here, but as far as I understand the question was that Nobel's Trust wanted to get into the Transvaal trade, and they made arrangements with a man of the name of Gobert, a shareholder in the new company, who got the majority of the shareholders to go with the Nobel's Trust. The French Company had offers from the other side to secure that majority of votes, and Gobert's conditions were that he should receive these 22,500 shares.

2062. Had Gobert control of Nobel's Trust?—No. He had shares in the old company. There were two offers before the old company, one by Nobel's Trust, and one by a French combination, and Gobert was prepared to secure the majority of votes for Nobel's on condition that they paid him 22,500 shares.

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2063. You know, of course, that under the terms of this contract you had to pay 20 per cent. of the surplus profits to the Government?—Yes.

2064. Before this surplus profit could be declared a dividend had to be paid on these 182,000 fully paid-up shares to the French Company, 25,000 to Lippert, 22,500 to Gobert. Any prospect, therefore, of surplus profits reaching the Government was postponed for a considerable distance of time.

2065. Can you tell me what the Government got for such postponement?—The Government was informed of all these contracts. They did not get anything.

2066. I shall deal first with the contract of 25th October, 1893. That was the first contract which you received and assigned to the new company?—Yes.

2067. You knew that that contract was to be granted pursuant to the resolutions of the Raad?—Yes.

2068. These resolutions embodied the regulations under which this contract was made?—Yes.

2069. I will not discuss the legal points with you, but you know that it is alleged that your contract did not comply with these regulations?—I think my counsel will tell you that.

2070. You knew perfectly well that you entered into that contract when the Raad regulations had been made?—Yes.

2071. One of these regulations was that the factories which were contemplated to be erected by you should be completed by April 26th, 1896?—Yes.

2072. They were not completed then?—They were not completed in April, 1896, but then arrangements were made in the meantime.

2073. You refer to the contract of May, 1894?—Yes.

2074. You rely upon that as the contract?—Yes.

2075. And you knew that variations were made in the original contract in your favour. Certain time was granted by the contract of May, 1894?—Yes.

2076. By the contract of May 1894, section 6, the Government undertakes to apply to the Raad, upon being requested to do so by the agent, for an extension of the time limit for establishing the factories within two and a-half years from the date of the signature of the contract, dated 25th October, 1893.

2077. That was a new provision which did not appear in the contract of October, 1893?—Yes.

2078. Did you have any authority of the Raad for the extension of this time limit, so that the period of $2\frac{1}{2}$ years might date from May, 1894?—Yes, we pretend that we have.

2079. On what ground?—I think counsel will be able to show you.

(*Mr. Rooth.*) That is a question of legal interpretation.

(*Chairman.*) It is the constructive authority or ratification by the Raad. (*To Mr. Rooth.*) Do you rely upon any resolution of the Raad as authorising the contract of May, 1894?

(*Mr. Rooth.*) We have a whole series of resolutions.

2080. (*Chairman.*) (*To witness.*) Supposing, for the sake of argument, that contract of May, 1894, is good. Had you, before the 25th of April, 1896, completed the factory sufficient to produce 40,000 cases of explosives?—Not in April. I should like to state that the letter referred to was not about an extension of time, but was a letter asking to be allowed to erect a factory to produce 40,000 cases.

2081. It is not a letter but an agreement, and it provides that you shall erect a factory before April, 1896, capable of producing 40,000 cases. You did not erect such a factory. Did you, in point of fact, even in October, 1896, erect a factory capable of producing any number of cases?—Yes.

2082. What amount of cases could you produce early in October, 1896?—You have a statement there which gives the number of cases we could produce then.

2083. It was not more than 80,000 cases?—We could have produced more.

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2084. (*Chairman.*) (*To Mr. Rooth.*) Have you the letter written by witness of 2nd October, 1896, to the State Secretary?

(Mr. Van Hulsteyn put in book showing returns of dynamite manufactured by the company.)

2085. (*Chairman.*) (*To witness.*) I will refresh your memory by showing you a letter written from your company and signed by yourself, and I put it to you that at that time the capacity of your factory was to produce 80,000 cases?—Yes, but that does not imply that we could not make more. I had interviews with the Government, and I pointed out to them the danger of starting a large new factory in the country, where nitro-glycerine had to be made and used in enormous quantities. I said I thought it was more advisable to start on a smaller scale than to engage in operations to the fullest extent under the contract. The Government quite agreed with that idea, and were of opinion that a factory producing 80,000 cases would be sufficient as that was about the number that could be sold.

2086. You say that at the time these regulations were made, in 1893, the necessities of the country were for 80,000 cases per annum?—Yes.

2087. And three years afterwards you were capable of producing that number, 80,000?—Yes, we were capable of producing more.

2088. You said you would have been able to produce more had you not persuaded the Government that it was expedient for the public safety not to do so?—Yes, the Government saw the danger and agreed that a factory producing 80,000 cases would be sufficient to show that we had fulfilled our contract

2089. If you can manage 80,000 cases so far as safety is concerned, where is the difficulty in manufacturing a larger number, say 200,000?—Everything was new, and the people were not properly skilled.

2090. You did not have a sufficient number of trained hands to manage more than a small number of cases?—We had trained hands, but these trained hands had to work together before things would go smoothly. We had to go slowly and cautiously before starting in full swing.

2091-2. It seems strange to me that you could not manage more than 80,000 if you had your employees working together and they were skilled hands. In point of fact, if you take October, 1896, the number of cases actually used at that period was something like 200,000 per annum?—About that.

2093. So that you, at that time, would be still importing 120,000 in addition to the 80,000 which you say you manufactured?—The Government were then importing large quantities of guhr impregné, which were made into dynamite.

(Mr. Rooth put in a statement of returns, showing importations month by month, and also quantities manufactured by the company.)

2094. (*Chairman.*) This book is the production and sales book. I suppose witness is familiar with it. The statement Mr. Rooth handed in speaks of the production in December, 1896, and sales 14,857. What is that? Then there are other quantities in that year, bringing up the total to 95,853 cases.

(*Mr. Rooth.*) That is for six months. (*To witness.*) Are these sales?—Yes.

2095. These sales were entirely of imported stuff?—No, partly imported and partly made out of guhr impregné.

2096. But this book which seems to have been made up at the time shows that the total manufacture for the year 1896 is down to zero. It is an absolute blank?——

(*Mr. Rooth.*) There may be some other books.

(*Chairman.*) According to this book there is an absolute blank from January to December. The other columns deal with dynamite Nos. 1 and 2 and so forth, but the total manufacture is nothing.

(*Mr. Rooth.*) The figures in that statement have been made up from returns from the head office from time to time.

(*Witness.*) That is not an official book. We got all our returns from the factory. This is only a hand book enabling us to see what was made.

2097. Who keeps this book?—One of the clerks.

2098. I notice that it has been kept in the same handwriting right through to the present day?—Yes.

(*Mr. Rooth.*) It appears on page 52 of the book that 94,000 kilos of nitro-glycerine were manufactured in 1896. If that did not appear in the proper column of the statement it must have been an oversight.

(*Mr. Van Hulsteyn.*) I have another statement drawn up by the accountants which will show that the assertion made by Mr. Rooth with regard to the quantity manufacured in 1896 is not correct. They manufactured nothing like that. The accounts will be put in.

(*Chairman.*) I see that in 1896, even according to the statement which you have put in, there were only 8,464 cases sales. This shows an immense proportion of imported stuff as compared with that manufactured.

(*Mr. Van Hulsteyn.*) During 1896 11,000 cases were manufactured.

(*Mr. Rooth.*) I shall produce the manufacturing book, which will be the best evidence.

(*Chairman.*) (*To Mr. Rooth.*) Your client's contention that he was manufacturing 80,000 cases in October, 1896, is not correct.

(*Mr. Rooth.*) I hope to be able to explain that later.

(*Chairman.*) You can explain it in the face of these books and documents?

(*Mr. Rooth.*) I think I shall be able to show that 94,000 kilos were manufactured in 1896, and I will be able to prove that nitro-glycerine cannot be kept very long.

(*Mr. Van Hulsteyn.*) 11,000 cases were manufactured and nothing more right up to December, 1896.

2099. (*Chairman.*) (*To witness.*) In 1897, what do you say as to that year? Was your output increased?—Considerably. In fact, I remember that in May of that year we made more than what the sales were.

2100. (*Chairman.*) (*To Mr. Van Hulsteyn.*) Will you put in statements from the accountants to prove the exact sales?—Yes. They have carefully gone through the books, and I have a statement of the manufacture and importations.

(*Witness.*) I can produce the factory returns.

(*Chairman.*) You had better do so.

(*Mr. Rooth.*) Mr. Van Hulsteyn has a list which has been made from the books of the company. I should like to have a copy so that I may be able to check it for ourselves.

(Statement handed in to form part of tht papers in the case, and Mr. Rooth empowered to peruse same.)

Mr. Van Hulsteyn explains that this is a statement showing the quantity of explosives purchased, the quantity which has been imported and cartridged here, and also the quantities manufactured from 1894 to 1899. These are extracts from the company's manufacturing books.

2101. (*Chairman.*) (*To Witness.*) When the company manufactures, does it do so from the raw material? That is, what the company calls raw material, such as sulphur, saltpetre, and glycerine. Are these things not imported?—Yes, but they go through different processes. The raw material cannot be produced in sufficient quantity in this country.

(*Account put in and shown to witness.*)

2102. Are you able to say whether this summary is accurate?—I cannot say without the books.

(*Statements formally put in subject to proof afterwards.*)

2103. Assuming that both in April and October, 1895, you were absolutely unable to produce sufficient for the needs of the country, you say that that demand was waived by the Government?—Yes.

2104. And that so far as you know, with regard to erecting factories capable of supplying the needs of the country, you were unable to do so, as you admit? Do you say that the requirements of the contract and the regulations of the Volksraad were also waived by the Government on your representations?—My contention is that the factories in October, 1896, were capable of producing more than 80,000 cases.

2105. How much more?—I would rather leave that to our technical manager, who can give you all particulars.

2106. But you admit in your letter that the factories were not completed in April, 1896?—They were not.

2107. And yet you say they were complete to some extent in October?—Yes.

2108. What authority of the Raad can you produce to show that an extension of time from April, 1896, was granted to you?——

2109. (*Mr. Rooth.*) I purpose handing in all the resolutions of the Raad. (*To Witness.*) Did not your company seek to obtain from the Raad an extension of time in September, 1894?—I was going to say that on the 8th June, I think it was 1894, I wrote two letters to the Government. You see we could never communicate with the Raad, but only with the Government. One of these letters asked whether the Government would allow us to erect a factory capable of making only 40,000 cases. That letter was laid before the Raad, and our request was refused. I wrote the second letter on the same day, asking that the contract should date from the 24th May, 1894. This matter we had discussed with the Government, and the Government promised that if I put it in writing they would reply. That was what they promised me.

2110. (*Chairman.*) You know perfectly well the importance of a ratification by the Raad?—Quite so.

2111. Then the second letter in June, 1894, was a letter in which you sought an extension of time, and, knowing the importance of getting the matter decided by the Raad, I suppose you thought that letter was going to be submitted to the Raad?—I was advised that the Government had a right to stipulate. It was left to the Government to make the contract with us.

2112. Why do you distinguish between the two cases, the one being permission to erect a factory for 40,000 cases and the other an extension of time to 1896. One letter was laid before the Raad with your knowledge and intention?—The company was not floated, and my people refused to float the company unless they were assured that the date was extended to the 24th May.

2113. You know as a fact that in September, 1894, the Raad specifically refused to grant your request for an extension of time?—Yes, that had to do with the production of 40,000 cases. That is what we asked, and they refused it.

2114. The other request you made was never placed before the Raad?—No, so far as I know.

2115. What do you say was the capacity of your factory in September, 1899, just before the war broke out?—I think we could have produced 500,000 cases.

2116. Now, between September, 1894, and, say August 27th, 1899, did you rely upon any resolution of the Raad as authorising what you were doing?——

(*Mr. Rooth.*) There are several resolutions which I purpose putting in later on.

(*Chairman.*) What are the dates?

(*Mr. Rooth.*) The various resolutions are as follows:—

13th September, 1894, Article 1706.

3 Articles in September, 1895, namely 1706, 1709, 1710.

Some of these were negatived, but I shall use them in argument.

Article 1711, 14th September 1894.
„ 1244, 17th „ 1895.
„ 1245, „ „ „
„ 859, 7th August „
„ 1293, „ 1896.
„ 43, 4th February 1897.
„ 46, „ „ „
„ 1655, 4th November „

Three resolutions of that date were negatived.

Article 1656, 4th November 1897.
„ 1738, 15th „ 1898.
„ 1739, „ „ „
„ 308, 14th March 1899.
„ 311, „ „ „
„ 608, 26th July 1899.
„ 615, 27th „ „
„ 959, August 1899

(*Chairman.*) You will have copies of these resolutions when you come to argue?

(*Mr. Rooth.*) I think copies of these resolutions have been handed to the Commission.

2117. (*Chairman.*) (*To Witness.*) I suppose you had pretty constant communications with Europe during all this period?—Yes, I had.

2118. I am taking 1896 as the period in which this discussion as to your various obligations took place with the Government. Who was on the Executive Council at that time?—There was the President, Dr. Leyds, General Smit, Mr. Wolmarans, and General Joubert, five in all.

2119. I suppose of these five the President and Dr. Leyds were the most influential?—I know the President was.

2120. And the President was a good deal advised by Dr. Leyds, was he not?—I suppose so.

2121. Was the scientific adviser and State mining engineer a man of the name of Klimke?—Yes.

2122. I suppose if you were fortunate enough to have the President, Dr. Leyds, and Mr. Wolmarans upon your side in the Executive Council, and you had also Mr. Klimke, you could generally have your way with that body?—(*Hesitation.*) I probably would.

2123. Did you advise the Hamburg Board, who controlled you absolutely, as to the condition of politics out here? Did you keep them well informed? They knew when the Progressive party was getting the upper hand of the party that was the reverse of progressive?—Yes.

2124. And I suppose you directed your exertions to securing the best interests of your company by influencing parties?—My negotiations with the Government were in the Executive. Naturally I tried everything I could in the interests of my company.

2125. You have been a friend of Dr. Leyds for a good many years?—I was.

2126. And as you have said, he was a very active and ruling spirit in the Executive?—I suppose he was.

2127. You have told us also that all matters of importance with regard to policy or expenditure were discussed between you and Alberto Philipp?—Generally.

2128. He would not take any important step without your advice, nor would you without his?—No.

2129. Did he show you the letters he received from Europe and discuss them with you?—Which letters?

2130. The letters he received on business from his father?—I cannot say he did. Official letters, yes, but not private correspondence.

2131. Letters which affected the position of your company and giving directions as to the policy and action of your company. I presume these were discussed between you?—I do not think always.

2132. Sometimes?—Yes, sometimes.

2133. Mr. Philipp might have told you generally what was in these letters, although he might not have disclosed the whole of their contents?—Yes.

2134. Mr. Max Philipp also corresponded with you?—He did.

2135. Do you remember in April, 1896, a syndicate called the Gold Farms Syndicate?—Yes, we had a gold syndicate.

2136. The company had?—No, not the company, we as individuals, that is Mr. Max Philipp, Alberto Philipp, and myself. There were other people also.

2137. Was it a pretty good thing?—I do not know. It was supposed to be a very good thing.

2138. In April, 1896, were the shares at a considerable premium?—No, I do not think they were.

2139. Were these 50 franc shares not worth 64 francs in the market?—I cannot tell you. I do not know anything about the quotations. The shares were not officially quoted.

2140. Did Mr. Max Philipp know as much about the Gold Farms Syndicate as you did yourself?—I once went to the property, and I do not think he has been there.

2141. So that you would have a little balance of advantage over him. Look at this letter of 22nd April, 1896, in which Mr. Max Philipp suggests giving to Dr. Leyds one half interest of 2,500 syndicate shares. Mr. Max Philipp was sanguine enough to believe that these shares would go to £5, I suppose on your representations?—I see it is written by Mr. Philipp and addressed to me.

2142. It is stated in this letter which Mr. Max Philipp writes to you "I think it nothing but right that I give you and Dr. Leyds a share in the syndicate."

(*Mr. Van Hulsteyn.*) I think the witness should read the whole letter.

2143. The letter also states, "You will remember that I have spoken to you several times about buying Transvaal shares, which still lie in the portfolios of

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the Hamburg Dynamite Company, and over which the company has still retained a right of disposal. In the meantime these papers have gone back considerably on the Paris Exchange, and it is expected that by the announcement of a dividend of the Transvaal Company to from 7½ to 10 per cent. these shares might fall still further, and the board has decided to sell these papers to a syndicate, which consists of several of your friends. My opinion is that in a few months these papers will have a rise, and that a good profit will come out of it. In this same letter Mr. Max Philipps says, "I believe it is not more than right that I should allow Dr. Leyds and you to have a part in this syndicate, you who have worked with us and know everything just as well as the writer, and Mr. Leyds, who always takes such a great interest in this thing." What syndicate did Mr. Philipp refer to?—I should like to have another letter before me.*

2144. Surely you were not so indifferent to a profit of this kind as to have forgotten what this syndicate really was?—I suppose this refers to the Agency Syndicate.

2145. The agency for what?—The contract that Lippert had with the company was completed with the company, which was called the Agency Syndicate.

2146. That was the contract by which Lippert got so much per case?—Was it ten shillings per case?—No, it was on a sliding scale of from 7 to 4 per cent.

2147. At any rate it was a very valuable agency?—Yes.

2148. The suggestion is that you have 25 per cent. in the whole shares of that agency, and the suggestion also is that Dr. Leyds should have half. I understand that there was a syndicate formed, and Mr. Max Philipp estimated that the interest he was going to offer to you and to Dr. Leyds was from seven to nine thousand pounds profit. I suppose you gave Dr. Leyds an interest?—I did not give anything to Dr. Leyds, and I have never received nine thousand shares.

2149. Are you prepared to swear that you never did hand over to Dr. Leyds the interest in that syndicate referred to in that letter?—Yes, I swear that.

2150. Why did you not?—Because I understand from this letter that Mr. Philipp proposes it.

2151. Yes, he proposes it to you, and Mr. Philipp is chairman of the Hamburg Board?—This was not the Dynamite Company.

2152. It was not the Dynamite Company, it was Lippert's valuable agency contract. Why did you not comply with the proposition Mr. Philipp made to you?—I did not comply.

2153. (*Chairman.*) You must be very careful. Are you prepared to swear that you did not comply in any way with that letter?—Yes, I am.

2154. I will give you another chance. Will you swear it again?—I have never given Dr. Leyds anything.

2155. No shares or anything else?—No.

2156. Have you not caused shares to be transferred to him?—No, I do not know anything about the circumstance.

2157. What answer did you send to this letter?—I might have gone to Dr. Leyds and said to him that Mr. Philipp proposed such a thing, but there the matter rested, because I know I never transferred anything to him or gave it to him. May I explain this. In April, 1896, I believe I was not here, and perhaps that matter was settled at home, but I certainly never gave Dr. Leyds anything. That I can swear.

2158. Now what is your belief? Do you believe that that suggestion was carried out, if not by you then by someone else?—I really cannot tell you. I do not know anything about it.

2159. Do you say that this letter addressed to you was followed by an absolute blank of neglect on your part or everyone else's?—No, I would not say that.

2160. What did happen then? Here is a valuable present to you and Dr. Leyds. Do you mean to tell us that you do not know anything more about it than that the proposal was made?—If I have done anything I have told Dr. Leyds or Mr. Philipp.

2161. Well, we take it that you did tell Dr. Leyds the purport of that suggestion?—I do not recollect, I fancy I did.

2162. What did he say, did he accede or did he refuse it?—He certainly did not accept it.

2163. Did he accept other persons' shares or money at that time?—From whom?

2164. From you or from the company?—No, not to my knowledge.

2165. Do you say that of your knowledge Dr. Leyds never accepted anything from you or from your company?—Not from me, certainly not.

2166. Or from your company?—I have heard a good deal about it.

2167. From whom? From other representatives of the company?—No, from the public.

2168. I will ask you again. Will you swear that in June, 1896, or before June, 1896, you did not make Dr. Leyds an offer or that someone else did not make an offer on behalf of your company, of money or shares, and that Dr. Leyds did not accept it?—As far as I believe I told Dr. Leyds that the proposal was made to me, but he did not accept it, so far as I remember.

2169. But this thing ought not to be a difficult matter of recollection. If you were advised from Europe to give a present to Dr. Leyds of a sum amounting to from £7,000 to £9,000, you ought not to forget whether he accepted it or not. Do you really not know whether Dr. Leyds accepted it or not?—He certainly did not accept this.

2170. Did he accept something in exchange?—(*Hesitation.*) No.

2171. This is a serious matter. If Dr. Leyds did accept this amount in shares you would know it, or if anybody else offered it to him on the company's behalf you would surely know it, and you would not have forgotten?—Yes, that is true.

2172. Are you prepared to pledge your oath that you do not remember that Dr. Leyds received a participation in these shares or not?—Yes. I do not know anything about it. He may have had.

2173. Do you mean to say without your own knowledge?—I do not recollect it.

2174. Now, let me draw your attention to this letter, dated 19th June, 1896, and addressed to you by Mr. Max Philipp.

He says in the letter, "I have just received your esteemed of the 24th May, and am very glad to get the confirmation of your cablegram informing me that our friend Mr. L—— accepted the participation of the syndicate. As soon as I am back in Hamburg I will make up the accounts of what is sold already, and you will kindly inform me where I have to remit the account. I hope that the contents of my letter of 22nd April made some impression on Mr. L——, as you know I only told him the truth of the matter. . . . " The rest of the letter relates to other matters.

(*Witness.*) That is another matter entirely, it refers to a share speculation.

2175. I put it to you whether in point of fact Dr. Leyds did not receive a participation in some enterprise. You denied it as to that one, and I read this letter in order to refresh your memory?—Oh, yes, he got something in that.

2176. How much did he get in that?—I cannot tell you the particulars. This was four or five years ago.

2177. But unless the policy of giving presents to the State Secretary of the Transvaal was a familiar one to you, surely you would remember it? Was the practice so frequent of giving shares to a man in the position of Dr. Leyds that you cannot give me any particuars as to what you did in this connection?—(*Hesitation.*) No.

2178. You really say that you are ignorant of the participation which your friend Dr. Leyds received?—(*Hesitation.*) I do not recollect.

2179. Mr. Philipp in his letter to you says: "I hope that the contents of my letter of 22nd April made some impression on Mr. L——, as you know that I only told him the truth of the matter." Now, the 22nd

* This with other letters of Mr. Max Phillipps was translated from the German. The translation used in the evidence was one made at Pretoria. The translation used in the Report of the Commission is one more carefully made at a later date in London. This accounts for differences in the wording.

April, 1896, was a very important period in the history of your company. It is about the time in which these factories ought to have been erected; and here is a letter from Mr. Philipp offering Dr. Leyds a valuable consideration in your syndicate. Mr. Philipp says he will be glad to get a confirmation by cablegram informing him that Dr. Leyds has accepted that participation. Does that collocation of dates have any significance to you?—It looks like that, but I cannot go further.

2180. Do you remember getting a letter on the 7th May, 1896, with reference to the present of a statuette to President Kruger?—Yes, I gave that. I came back from Europe, and I made this present to the President.

2181. I suppose it cost £40 or £50?—Yes, about that.

2182. This was not an isolated transaction. Were your instructions from Europe about this time from Mr. Max Philipp not to give one present only, but to give again and again, to spare no money in the interests of your company?—I do not know that he said so.

2183. But you were under the direction of the Hamburg Board, and we know what you did afterwards, at least I think we will remind you in a moment. Did he not expressly request you not to be afraid about expending money with the intention of influencing the Raad and its members?—It may be.

2184. What were the letters that Mr. Jacobson stole from you?—They were letters from Mr. Max Philipp to me.

2185. Did not Mr. Max Philipp convey to you through his son an expression of strong indignation at your having had the indiscretion to lose compromising letters?—(*Hesitation.*) I do not remember that.

2186. Surely you remember that incident? You remember a clerk in your office stealing some letters which were very compromising?—I do not know the contents.

2187. And you offered a very large sum of money for their recovery?—I did not, I beg your pardon, I do not think so. The man was in Johannesburg, and he wrote me a letter saying that if I paid him he would give me the letters back. Instead of doing that I sent a detective to Johannesburg and he was caught.

2188. You were not weak enough to give in to blackmail? Your object was to get the letters back. Now, tell me, were not those the compromising letters, and did not Max Philipp rebuke you for leaving them about? This is his letter to his son, Mr. Alberto Philipp: "Vorstman writes about the chantage of Rudolf Jacobson with regard to my private correspondence. This is a lesson for us, once for all, to burn at once any compromising letters. I cannot understand how Vorstman has kept these letters lying about so that this rascal has been able to steal them." Now remember that the date of that letter was 16th April, 1897. Do you not as a fact recollect perfectly well that you received instructions, not once or twice, but often, that you had to consult with Mr. Alberto Philipp and spend money with the idea of influencing the Raad? These letters you received from Mr. Max Philipp?—Not the Raad.

2189. You were to influence public opinion? I say members of the Raad. I put that to you?—I do not think he ever wrote to that effect.

2190. (*Chairman.*) You received a letter from Mr. Max Philipp, dated 25th June, 1896, from Paris. He begins: "I am very much pleased by the contents of your letter of the 31st of May. About Mr. Woolff I am very sorry to hear that the payment of his director's fees may convert him to be one of my friends. This would not change my views about this gentleman, and I insist upon his resignation when he is moving to Johannesburg. About the petition to the Government——" What was that about, do you recollect? You were endeavouring to negotiate this matter of an output of 40,000 cases and an extension of time. Was that the object of your petition?—Probably.

2191. Then the letter goes on to say: "I hope you will settle this matter all right, so that we shall not be deceived as we were the last time. Do not ask about money, the less we talk the better, and do not be afraid. You know that I will always join you in this respect. I am very glad to hear that the President and Dr. Leyds are always friendly inclined to us, and I should say that the opinion of these two persons is of more weight than the Executive Committee and the whole Volksraad." These are the two gentlemen to whom you were giving presents at that time?—(*No answer.*)

2192. You also received a letter from Mr. Max Philipp dated 23rd July, 1896, in which reference is made to Dr. Aufschlager, in which he says: "I beg you not to be sparing of money if it be necessary, and debit the Dynamite Company with any expenses that have to be incurred, or are incurred, as I have already come to an arrangements about this with Dr. Aufschlager?" Who was this Dr. Aufschlager?—He was a director of the Hamburg Board.

2193-4. There are other letters about this time that were written to Mr. Alberto Phillipp, which you told me it was extremely likely were shown to you and discussed with you. I will ask you again whether you did not receive instructions from Europe, you and your co-director here, to influence Dr. Leyds, and suggesting methods by which he was to be "convinced"?—Yes, but not about Dr. Leyds.

2195. I must ask you again what was that participation which Mr. Philipp refers to. Taking this letter of 17th June from Mr. Max Philipp it appears that you had advised him that Dr. Leyds had accepted that participation. What is that participation? Was it a participation in the syndicate of which you had apparently been writing?—I think that must be the syndicate for gold shares.

2196. If you please, let us say that was the syndicate. Now, what was the participation which you refer to? You must know perfectly well whether it was such a participation as you think would bring conviction to the mind of Dr. Leyds?—All I remember is that the contents of that letter I communicated to Dr. Leyds, and that he has not accepted it, and neither have I given him anything. That is another thing; there are two different matters.

2197. The important fact is that on these dates you should be giving these shares to Dr. Leyds. The date is just when the petition is going into the Government, and he was going to receive it as a member of the Executive?—It does not follow.

2198. (*Chairman.*) Some people received presents and did not carry out what they were desired to do?—There was no such wish in this case.

2199. On 6th August, 1896, Mr. Max Philipp wrote to you, and begins by referring to the South African Bank in Paris, who, he says, together with Wernher, Beit and Co., and Hirsch, were continually disturbing the market, both with regard to the mining interest and with regard to your monopoly. In this letter he says: "To treat directly with these gentlemen, in order to silence this eternal opposition, I consider to be, if not impossible, yet very difficult, but I am of opinion that it would be difficult; the bank wishes to make itself popular, and the other gentlemen follow their private aims not to allow the Government to rest, and they continue to bring the old complaint with regard to English jealousy. This matter goes so far that, as at least I have been informed by a director of the Comptoir National, the said bank has intrigued with the French Government not to give any order to our friend Dr. Leyds, but only to send over the grand cross of the Legion of Honour to President Kruger and the Minister, Joubert, and so forth." Then there is a reference to 5,000 syndicate shares and in a second letter of the same date there is a further reference to these shares to be given at your discretion to someone, if you are satisfied that he has been working in the interests of the company. Did this refer to the syndicate for Lippert's agency?—Yes, I fancy so.

2200. The letter says: "If you are convinced that our colleague has done something, or has at least shown the best will to do something for us, this sum is to be handed to him." Who was your colleague, was it Dr. Leyds?—(*Hesitation.*) From the correspondence, I should say so.

2201. Then there is a reference to some Christmas presents to Dr. Leyds, Mrs. Leyds, and others. Did you, in point of fact, give these 5,000 shares to Dr. Leyds? You are given the discretion to do so by that letter, which says if "our colleague works in your interest you are to do so." Now, did you give him the 5,000 shares?—I did not give him 5,000 shares. From a previous letter it will be seen that these 5,000 shares were allocated, and there was a balance of £813 13s. 7d.

2202. (*Chairman.*) Well, did you give that sum or any part of it to Dr. Leyds?—I can look it up, but I cannot tell you now.

2203. You are not prepared to deny straight away that you did?—No, it is quite likely.

2204. There is another letter, dated 15th September, 1896, in which Mr. Klimke came upon the scene. In that letter from Mr. Max Philipp to you reference is made to the Gold Farm Syndicate to be divided into 25

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paid-up shares, of which Mr. Klimke was to get six?—Yes, I remember that.

2205. What was each of these shares worth?—Well, it was a syndicate of 50,000 shares, but only 25,000 were paid up

2206. These were founders' shares?—Yes.

2207. Was each of these shares worth at least £1,000?—No, they are not worth that to-day.

2208. I am not speaking of to-day, but of September, 1896. On that date, what were they worth?—It was a developing syndicate, and so far nothing has ever come of it.

2209. You are speaking in the light of the painful past, but in September, 1896, at the time this presentation took place, was it not your belief that these shares were worth at least £1,000?—I do not say so.

2210. What were they worth? You would not insult the adviser of the Government by offering him anything of inappreciable value? Did he obtain these shares from you and your company?—But that has nothing to do with the Dynamite Company.

2211. Possibly not, but do you not think that the handing of a considerable number of valuable shares to the State Mining Engineer and Adviser of the Government at so critical a period as October, 1896, was not of importance to and had nothing to do with the Dynamite Company?—No, I do not think it had.

2212. You know that in all matters of importance, such as scientific matters which affected your company, Mr. Klimke was the adviser of the Executive Council?—I suppose so, he was the State Mining Engineer.

2213. You know also that he was a very strong opponent of Mr. Lippert and his concession?—Yes.

2214. Then this dealing with him took place. Did he not cease to oppose your monoply?—No, the conditions were quite different.

2215. (*Mr. Curlewis.*) May I suggest that the witness be asked whether Mr. Klimke was not the gentleman appointed by the Government to buy the explosives in Europe?—Yes.

2216. About September, was not a petition drawn up to the Government on behalf of your company in order to induce the Government to say that 80,000 cases were sufficient to satisfy the demands of the public? Do you recollect that?—Yes.

2217. (*Chairman.*) And did Mr. Philipp suggest to you that Dr. Leyds should himself draw up the letter to the Government, he himself being a member of the Executive Council?—He may have done so.

2218. Did he do so?—I do not recollect.

2219. Did not Dr. Leyds draw up that petition?—I do not recollect.

2220. At any rate, you are sufficiently assured that Mr. Philipp suggested that Dr. Leyds should do so?—I do not recollect whether Dr. Leyds did it.

2221. Then there is a further letter, dated 1st October, 1896. On that date, did you receive instructions from Mr. Max Philipp that you were to go to Dr. Leyds, and you were to offer him a certain 1,000 shares from your own shares for friendly services, and the letter also says "he will no doubt gladly accept"?—I do not recollect it.

(*Letter quoted by the Chairman.*)

2222. Was each of these shares worth £1,000?—A syndicate share would be nominally £1,000.

2223. On the 23rd December, were Christmas presents given to Dr. and Mrs. Leyds?—I think some presents were sent out from Europe.

2224. On 30th October, 1896, you further received instructions to offer to Dr. Leyds one share in the Dynamite Agency Company. This letter from Mr. Max Philipp to you states: "I am of opinion that we ought from our side to prove our gratitude to Dr. Leyds in some form or other, and, seeing that the new company is the result of the former company, a letter has been addressed by the writer to Dr. Leyds, in which one free share is offered to him in the Agency Company." Do you remember that, Mr. Vorstman?—Yes, I remember it.

2225. Do you remember being instructed in October, 1896, to offer Dr. Leyds one share in the Dynamite Agency Company—that is, Lippert's Agency?—Yes.

2226. Were not these shares at that time worth £3.000 (60,000 marks) each of them, that is about it, is it not?—I do not think so.

2227. You are not unfamiliar with business, and you must know what these shares were worth in 1896?—I do not know what they were worth.

2228. At the lowest, was one of these shares not worth £3,000 or very nearly that sum?—Philipp says it's worth a considerable sum.

(*Mr. Van Hulsteyn.*) It can be shown that at that time these shares were worth £3,000.

2229. On the 17th November, 1896, Mr. Max Philipp again writes to you as follows: "You were quite right only to offer Dr. Leyds a syndicate share for his success." Was that the success of the policy you were advocating with the Executive Council?—I suppose so.

2230. There was another member of the Executive—Mr. Wolmarans?—Yes.

2231. He represented the Government as a director of your company? He was the Government's representative on your Board?—I do not think so, I think he was an independent member.

2232. You say Mr. Wolmarans was an independent member of your board, and he happened to be a member of the Executive. What did he receive as salary?—He did not get a salary, he only got a share of the profits.

2233. Worth quite a thousand a year?—No.

2234. Did any directors serve for less than that?—Oh, yes.

2235. What was the average share of the profits, say, at 5 per cent., that would be £700 a year?—Yes.

2236. But that was not considered quite sufficient for Mr. Wolmarans?—He never got anything else.

2237. Did he not?—(*Hesitation.*) He once got £500 for extra services.

2238. What services were they? Assisting your interests on the Executive, I suppose?—Yes, I suppose so.

2239. There was also a little matter of an overdraft against him at the bank of which you were a director, the Netherlands Bank?—I do not know.

2240. Do you not recollect that a suggestion was made in a letter from Mr. Max Philipp to Mr. Alberto Philipp, Mr. Wolmarans was a debtor to the bank, and one day he was called upon to pay, and he was unable to do so? At that time Lippert paid the money, and it was stated that you also paid a portion. Did you tell the bank manager, Jorissen, to be lenient with Wolmarans?—I may have done so.

2241. You did that also, I suppose, to secure his interests on the Executive?—Yes.

2242. Do you remember discussing the instruction with Mr. Alberto Philipp that if members friendly to your interests got into difficulties with their bankers, and were people who might be required for your purposes, and as in the case of our "Good Wolmarans," such unpleasantnesses would have a bad influence for the interests of your company, you were both to discuss this matter with Jorissen, and Mr. Max Philipp expressed a hope that in the future such unpleasant things would not occur?—Probably, being in Europe I might have discussed the matter.

2243. Do you remember a purchase by Labouchere, Oyens, and Co. for Dr. Leyds of 4,000 shares in the National Bank and 1,250 shares? Was that not done at your instigation?—That was a private speculation between Dr. Leyds and myself.

2244. As partners?—Yes.

2245. Did you supply all the funds or did he supply any?—Neither of us, we got a bank credit in Europe, and went in for this speculation together.

2246. Who gave Dr. Leyds the bank credit?—There was Dr. Leyds, Max Philipp, and myself.

2247. You supplied the funds for Dr. Leyds' speculation for these 5,250 shares?—We got a bank credit.

2248. The bank surely would not have given a credit without some substantial guarantee? Did not the bank give the credit to you and Mr. Philipp?—Mr. Philipp is chairman of our Hamburg Board, and he got the credit and we speculated with it.

2249. You made a profit, I suppose?—I did.

2250. And Dr. Leyds?—(*Hesitation.*) Very little.

2251. A considerable profit?—No, it was not much.

2252. Perhaps you can remember what it was?—Oh, a few hundred pounds.

2253. There is a letter which I wish to bring to your notice. It was written to Mr. Alberto by Mr. Max Philipp, and is dated 2nd September, 1897. Before referring to it I will ask you one or two questions. The Progressive party seems to have come uppermost in February, 1897, and the Volksraad Commission was opened, you may recollect, which reported adversely to your company?—They did partly.

2254. We have that report; you do not think it was a favourable report?—No.

2255. It contains suggestions for the cancellation of the contract?—Mr. Jeppe was chairman, and he said it should not be cancelled.

2256. In April of that year 1897 the Industrial Commission was appointed, and some time about August or September of that year the report of that Commission was made, and it was decidedly unfavourable to your company. They reported in favour of the cancellation of the contract?—Yes.

2257. Ever since that date has your company had a good deal of stress and work to keep their position in the Transvaal; was there not constant agitation?—Yes.

2258. It became important therefore from your point of view that all the powerful men you could get hold of in the Transvaal should be on your side?—No doubt.

2259. Now in his letter of 2nd September, 1897, Mr. Max Phillip refers to the consideration of Art. 15 (*a*) of the Regulations by the Commission. He says that the Commission has overlooked the fact "that Art. 15 (*c*) is explained by paragraph 12 of the contract, according to which the Government, in the event of the sale being carried out by it, must buy the stuff from us even at maximum price, for so far as the same is not imported we will manufacture everything and import nothing. That after all would be the best solution, and I regret that I have not come so far yet as to dictate the maximum price to the mines." This letter further says you had better discuss it with Mr. Vorstmann and Dr. Leyds. He adds: "If you consider it necessary you may talk to Vorstmann and Engelburg." Who was Engelburg? Was he not the editor of a paper which was hostile to your interests and whom you bought?—He was an editor in Pretoria.

2260. This same letter also states: "I expect next week a cable so that I may come in peace of mind to my estate at San Remo." He adds: "We have carried out our contract, and no man can attack us. This opinion is shared by Dr. L., and is shared by the President." Then he says: "It is true, if then the Volksraad majority votes against us, we must commence a law suit." Then he says: "Beware of Surprises. Money is at your disposal, and it is better to spend some money, even if we feel that we are in the right, rather than later fight against a resolution of the Volksraad, which fight will cost us much more than the couple of thousand pounds which it will perhaps cost to prevent this resolution." Did you discuss that with Mr. Alberto?—Very likely I would.

2261. We have further in that letter a reference to the American agreement. Dr. Leyds promised immediately to cable news of the ratification of the American agreement. That agreement was made in Europe, and you were one of the leading people in trying to consummate it?—I had nothing to do with it. It was between the American manufacturers and Nobel's people.

2262. Did matters go on in this way throughout 1897, 1898, and 1899? Did you and your colleague here receive instructions from Europe to spend money in the way you have admitted, and even at a very much heavier cost? In 1897 and 1898 a resolution was passed by the European Council by which a certain amount of money should be placed at the disposal of the chairman, and great part of that money has been spent here.

2263. The Hamburg Board gave authority to spend this money, to pay to the chairman for transmission to you and your colleague?—Yes, but I cannot give you any particulars. I spent some money here.

2264. That expenditure was embarked upon for the purpose of convincing various persons?—I should say it was for influencing the public.

2265. Including members of the Executive and members of the Raad in particular, was it not?—No, I do not admit it.

2266. (*Chairman.*) I think we can judge whether the admission is necessary or not. I should like to remind you of one matter before we leave that. There is a letter of 4th August, 1896, from Max Philipp to you. Had you granted a Government clerk an allowance?—Which Government clerk?

2267. A Government clerk; I suppose someone whose influence you wished to secure?—Sometimes I did.

2268. Do you remember getting this from the company? The letter says: "Contrary to what we wrote to you in to-day's official letter, we are willing to acknowledge the allowance you have granted to a Government clerk." The first portion of the letter reprimands you, Vorstman, for writing such things in official letters. Had you pointed out in an official letter that you had made an allowance of a corrupt kind to a Government clerk? Had you written officially to your Board in Hamburg charging them with the allowance you had made corruptly to a Government clerk?—I do not recollect that I had done so.

2269. Do you not remember Mr. Philipp writing to you about it privately, and saying: "Contrary to what we wrote you in our to-day's official letter, we are willing to acknowledge the allowance you have granted to the Government clerk"?—I do not remember.

2270. But it might easily have happened?—Yes, it might have happened.

2271. And this sort of work was done not by official but by private correspondence?—Yes.

2272. (*Chairman.*) I want to go back for a moment to one of the earlier transactions which I omitted by mistake this morning. In the payments made there were so-called obligations taken over by the new company. There is an obligation, for example, taken over in connection with Lewis and Marks; this appears to be in respect to Mr. Lippert's agency. A certain number of cases at 2s., and then there appears Lewis and Marks 80,000 cases at 1s. 6d., 40,000 at 1s. 3d., and 73,546 cases at 1s. That is from June, 1894, to 31st December, 1895. Apparently the Government owes money; to Lippert so much, and to Lewis and Marks £10,099. What was that for? What did Lewis and Marks give to the company in order to receive this payment?—I can tell you that. When I became connected with the old company in 1891 I found Lewis and Marks entitled to a royalty of 4s. per case. When I was about to make arrangements about the agency here I made an arrangement with Lewis and Marks in the same way as Lippert, but told them they had to reduce their interest in the company under any new arrangements that had to be made. Lewis and Marks had a contract with the company to pay them this royalty. That is how I found matters.

2274. You were acquainted with Lippert and his Concession, and you were intimately connected with the French Government; were you not curious enough to enquire what Lewis and Marks were receiving all these thousands a year for?—I understood they had financed the concern.

2275. Do you mean financed Lippert?—That is what I understood, but I did not know for certain what it was.

2276. Was Lippert's Agency the one we have been speaking of all this morning in respect to which this syndicate was formed. Did Lippert receive 10s. a case?—Lippert from the old company got 12s. 6d. per case, the price being about 100s.

2277. The agency which the syndicate took over, was that the right of Lippert to receive 10s. or 12s. 6d.?—That was the right of Lippert to get 7 per cent. over the selling price for the first 40,000 cases, then 6 per cent., 5 per cent., and 4 per cent. up to 80,000 cases.

2278. Is that contract with Lippert in writing?—There is a contract.

(*Mr. Curlewis.*) It is the contract of August, 1893.

2279. (*Chairman.*) Is that the contract which gives a sliding scale of the percentage?—Yes.

2280. That agency was worth a great deal of money?—Yes.

2281. I see from the 18th June, 1894, to 31st December, 1895, these commissions came out at the sum of £58,000 odd?—Yes.

2282. And from the 1st January to 31st December, 1896, they came out at £48,263?—That is about it.

2283. Was the syndicate of which you were a member formed to take over that agency?—Yes, in the latter part of 1897, I think in August of that year.

2284. Was Mr. Wolmarans a participator in that agency?—Not to my knowledge.

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2285. Any way, that was the property, and these were the receipts in the two years I have mentioned which the syndicate acquired from Lippert.

2286. Do you remember what they gave him for it?—He got £30,000 a year.

2287. That is his share in the syndicate?—They bought him out at that.

2288. When Dr. Leyds received from you a share in the syndicate which bought Lippert's Agency, of course his interest in the future was that that agency should be perpetuated?—I have been thinking the matter over, and I must say that to my knowledge Dr. Leyds had no share. I never gave him a share. I communicated the contents of the letter to Dr. Leyds, and as far as I can remember he must have corresponded with Mr. Philipp direct about it; but as far as I know he never got that share. All I can say is that in the share register it does not appear. Of course, that does not mean that he has none, but to my knowledge he has none.

2289. All you can say is that you received that letter, and you did not yourself give Dr. Leyds a share?—No, I did not.

2290. But you received instructions to do so; did you do so or not?—(*No answer.*)

2291. Now in addition to the statuette you made another offer of presents to President Kruger?—I did when I came out from Europe. When I went to Europe and came back I used to bring some presents for friends, and so also I did for President Kruger.

2292. Were they valuable presents?—I should not call them valuable.

2293. What is your measure of value? Were they worth some hundreds, or thousands, of pounds?—Some hundreds, but the last present I brought out he refused to accept, and that represented a few hundred pounds.

2295. How many others did he accept?—Only one, the statuette.

2296. On what grounds did he refuse the present which you say was worth several hundred pounds? Did he give you a reason?—Yes. I was called into the Executive Council, and the President asked me if it was through me personally, or whether I had brought this present from somebody to him, and he asked me whether the cows and bull were from third parties. I told him I had myself brought them out, and he refused to accept them.

2297. Did he not say anything more?—No, I do not think he did.

2298. What was your object in offering this valuable present? These were very valuable cattle?—Yes, in Europe they were very valuable.

2299. What was your object, and who paid for them?—In the first place I paid for them.

2300. And you were indemnified by the company, and the company approved of your offering these animals to the President; at all events, they paid the money. Did the President find out that these valuable cattle were coming from the Dynamite Company?—I do not think so.

2301. But that they were coming from you?—Yes.

2302. But under the circumstances he would not receive them?—No.

2303. I suppose you know why you and the company offered them. You did not do it for nothing?—Well, being on good terms with the President.

2304. Yes, you had known him for some time, but companies have no friendships. Why did the Dynamite Company want to give presents to President Kruger?—All I can say is that this is the only explanation I can give. I asked the company to pay it; they did, and there the matter ended.

2305. But if you incurred an expenditure from pure philanthropy, surely you did not take that to the Dynamite Company to endorse. Now we have here the instructions that you received throughout these years. You mention a certain authorisation with regard to expenditure. Have you the company's journal?—I have not got it here.

2306. On the 31st December, 1897, there appears an item in your journal, "Expert advice, special services and charges account"?—I remember that. We then had this amount disbursed by Max Phillip and Dr. J. Aufschlager in the interests of the company to be debited to a former account as per minute of European Council, £9,100.

2307. Was that amount disbursed by Philipp and Aufschlager by payment to you?—Part of it.

2308. All of it?—That I cannot say.

2309. And that was an amount that was authorised to be disbursed by Max Philipp by resolution of the European Board?—Yes.

2310. Now you recollect about the 4th November, 1897, there was a debate in the Raad referring to the report of the Industrial Commission?—Yes.

2311. The Industrial Commission had reported adversely to you shortly before that, and there was a debate in the Raad, and a resolution recorded by your company as hostile to their interests was come to. Do you remember about that time drawing a bill of exchange on Mr. Max Philipp for £5,550?—I do not remember, but I daresay it is so.

2312. And you negotiated that with whom?—The Netherlands Bank in Pretoria.

2313. Do you remember the manner in which you did that?—What would the course of business be?

2314. Would you advise him that you were going to draw upon him at such and such a date, and would he write to you and say he was prepared for you to draw upon him?—I suppose he was prepared.

2315. You were one of the general managers of the Netherlands Bank?—Yes.

2316. On your assurance of drawing on an acceptance, I suppose they would on your own security give you cash for the amount?—Yes.

2317. This debate having taken place in November, 1897, did you draw out from the Netherlands Bank £600 in notes and £4,700 in gold?—That may be.

2318. Did you give your I.O.U. for these two sums?—I do not remember.

2319. It would probably be that you did if the draft had not come forward?—Yes.

2320. If you wanted to anticipate Mr. Max Philipp's acceptance, and you wanted the cash before it came you would tell them you were expecting the draft?—I do not think it would be that way. Very likely I would have given a draft on Mr. Philipp, which was cashed at the moment.

2321. The point is that on 5th November you received £600 in notes and £4,700 in gold. What did you do with them?—I have acknowledged that we had a fund which I should call a secret service fund, but I regret I cannot give you the details.

2322. Having had your memory refreshed by letters, have you the slightest doubt that you spent £600 in notes and £4,700 in gold for the purpose of the secret service fund?—Very likely I did.

2323. To whom did it go?—That I cannot tell you, being a secret service fund I cannot divulge.

2324. (*Chairman.*) Oh yes, you can. We must ask you to reply to that question. (*Hesitation by witness.*) I quite understand your position, but you are compellable here. I want to know to whom that money was paid. Was it paid to members of the Executive Council?—(*Hesitation.*) No.

2325. Will you swear that?—(*Hesitation.*) I swear that not by me.

2326. To whom did you hand the money. You passed it to somebody. Who were the people whom you wished to influence? I am taking 1897 first.

2327. Will you swear that you did not hand that money to some person or other in order that it might be transferred to members of the Raad. You know you did?—(*Hesitation.*) I did not give such instructions; if a part of it has gone to members of the Raad it was not by me. I employed people to influence public opinion, and to support the papers which supported us, but I have never given instructions that members of the Raad should be paid.

2328. Do I understand you to say that you handed over this cash, notes and gold, to some person giving him carte blanche to influence public opinion, is that what you did?—No answer.

2329. If that person did in point of fact influence the members of the Raad, was he only carrying out your instructions?—Well, I did not do so.

2330. (*Chairman.*) You did not dot the i's and cross the t's of the matter, but you spent the money in the

way you thought best?—My instructions were that I could spend a certain amount of money in the interests of the company.

2331. And you left it to this unknown agent to use his own discretion as to the best means of employing the cash, who was he?—I may have appointed more than one, but I cannot say.

2332. Now, we have dealt with this 1897 period. In 1898 there is a similar entry in the journal dated 31st December. There again we have special purposes account £10,000 for an amount disbursed by Mr. Max Philipp and Dr. Aufschlager in the interests of the company. That is rather more. Was it spent for the same purpose and used by you in precisely the same way?—Yes.

2333. In April of that year was there not a petition from the Chamber of Mines presented to the Government praying for the cancellation of your monopoly?—Yes.

2334. And did you learn in August, 1898, that two or three of the most eminent Cape lawyers had been consulted and reported against the validity of your monopoly?—Yes, but I was also informed that they never had a case before them.

2335. And in December, 1898, did not this matter come before the Raad, and was then postponed?—Yes, October, 1899.

2336. At that time the matter looked rather critical for the company, there was a strong agitation against it?—Yes.

2337. Your affairs were being criticised with a good deal of narrowness?—Yes.

2338. Was it in view of that situation that you handed over £10,000 to be employed in the interests of the company?—No.

2339. I suppose it was for past services, services rendered in the year 1898?—Yes.

2340. You mean in the critical period which I have indicated to you?—Yes.

2341. Cash was drawn out to the amount of £10,000, and handed over to an agent, whose name you will not disclose, carte blanche given to him to expend it in the company's interest?—Yes, I suppose so.

2342. Matters became still more critical in 1899, Mr. Chamberlain's dispatch having been written early in May of that year. I notice that £20,000, double the amount required in 1898, was authorised to be paid to you in the same way. Did you express an opinion in April that your company was passing through the severest crisis you had known in its history?—Yes, I once informed Europe that, according to my opinion, the position was very critical.

2343. And, therefore, the interests of the company had to be most strenuously promoted, and for that purpose you received double the sum you obtained in 1898?—Yes.

2344. You know that on the 27th August the Raad modified to some extent the contract which they had always previously asserted was void. The Raad adopted a majority resolution. In August, 1899, a Commission was appointed to consider certain proposals which your company had made. That Commission consisted of eight members, four of them reported against your proposals, and the other four reported in favour of their adoption under certain conditions?—Yes.

2345. You knew that these reports had to come before the Raad for adoption or ratification?—Yes.

2346. And did they, in point of fact, come before the Raad later on in that month?—Yes.

2347. Did you use that £20,000 secret service money for bribing certain members of this Commission?—I do not know.

2348. Do you know as a fact whether they were bribed?—That I do not know.

2349. Do you mean you only handed over the cash to the agent in question without giving him definite instructions?—There was not one man only, but several men whom I employed.

2350. Do you remember an amount of £2,500 which was paid to your credit per cheque by Stegmann and Esselen?—I remember that.

2351. That was in favour of yourself?—Yes.

2352. How came they to pay you this sum? Where did it come from?—I sold some shares.

2353. Do you pledge yourself that that £2,500 had been expended in the purchase of shares?—In the sale of shares, yes. I got it for some Ermelo Railway shares.

2354. To whom did you sell?—To Stegmann and Esselen. They asked me if I had any, and I said I had. I forget how many there were. I remember the transaction, but I do not know how many shares there were.

2355. Who are Baerveldt and Holbaum?—They are brokers in Pretoria.

2356. Did you sell the shares through them?—I sold them direct to them.

2357. You are quite confident of that?—If I remember well, one of the partners of Stegmann and Esselen asked me if I had any shares to sell. I got a cheque at the time, but I do not know who were the real buyers.

2358. You pledge yourself that that £2,500 was for the sale of Ermelo shares?—Yes.

2359. Did you hold these shares on your own account or on account of the company?—I believe on my own account.

2360. Did you draw out that amount entirely in cash, notes, and gold?—I do not think I did.

2361. Did you pay out £1,220 of that £2,500 to Max Philipp?—I think I did.

2362. And the remainder of that £2,500 was drawn out by you in notes and gold?—I cannot say, perhaps it was.

2363. Was it for the same purpose that we have heard these two sums of £9,000 and £10,000 was used for, namely, to influence people?—It may have been.

2364. Have you any doubt that it was?—I cannot say for certain.

2365. You think it probably was?—It may be.

2366. Do you remember receiving £20,000 in addition to this £2,500 which the Hamburg Company had authorised you to receive?—Yes, I remember getting that.

2367. There is an item I have before me in the banking account, 26th August, £1,732 10s. Is that the balance of the £20,000 which you paid in?—Very likely it was.

2368. Was the remainder of the £20,000 drawn out by you in notes and gold?—Yes, it was.

2369. That appears to be on the 26th August; that is the day before the Raad ratified the report which I have read to you?—That I do not remember.

2370. On that day, the 26th August, the day before the Raad confirmed the majority report which was in favour of your company, did you meet at the bank a man named Breytenbach?—I cannot say.

2371. Do you know that man?—Yes.

2372. Is he a relation of President Kruger?—I do not know.

2373. Have you not often seen him with the President?—No, not with the President; but I think he often used to go to the Presidency.

2374. Was he intimately connected with the President?—I do not know.

2375. Was he a frequent visitor at the President's house?—Yes.

2376. Was he a man who had very frequently communications with the various members of the Raad; was he a well-known man?—Well, in a little place like this every man is well known.

2377. And Mr. Breytenbach, who is acquainted with the President, knew the members of the Raad also?—Yes, I suppose so.

2378. Did you hand to him on the 26th August, in that bank, £3,500 in cash?—(*Hesitation.*) I am not prepared to say.

2379. Are you prepared to deny it?—(*Hesitation.*) No, I am not.

2380. Then you did so? Now what did you give him that sum for, was it for the same purpose, to serve the interests of the company? Is that so?—I said just now I would give no names.

2381. I understand that you have already said you cannot deny that you gave that amount to this man. We have evidence as to what he did at any rate. Do you think he served your interests?—I am not bound to give any names or details. I can only say, and I acknowledge, that we have had a secret service fund.

2382. Did you hand over to that man Breytenbach, in

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the bank, £3,500 in cash on the 26th August; you say you cannot deny it?—No, I cannot.

2383. Did you pay out some time in September a sum of £500 by cheque in favour of Mr. Potgieter?—I do not think so.

2384. A cheque was drawn by you in favour of Mr. Potgieter, upon this the Netherlands Bank for £500 in September, do you not remember it? It is not long ago?—(*Hesitation.*) I cannot remember.

2385. Who is Mr. Potgieter; his name is Pieter Johannes Potgieter?—He used to be Mayor of Pretoria.

2386. Who is Mr. J. Du Plessis De Beer, is he a member of the Raad?—Yes.

2387. What instructions did you, if any, give to Mr. Potgieter as to the disposal of the £500 which you paid him?—I gave him nothing.

2388. Did you not hand him that sum upon the same footing as you had handed other sums to your secret agent or agents?—I do not remember why I gave the cheque to Mr. Potgieter.

2389. On the 7th September, 1899, just before that cheque for £500 was drawn by you in favour of Mr. Potgieter, had you no business relations with Mr. Potgieter; you must remember what sudden impulse took you to give him that amount?—(*Hesitation.*) I really do not remember whether I gave him that.

2390. Well, take it from me that you did so; you did not give it to him for nothing. (*Bank deposit slip handed in.*) Why did you make that payment of £500 to the Mayor of Pretoria with whom you had no business relations?—(*Hesitation.*) Well, if I did so, he certainly must have assisted me in some way or other.

2391. And if he transferred £300 of that amount to Mr. De Beer he would not have committed a breach of trust towards you?—I do not suppose so (*cheque shown to witness*).

2392. So this special account which I have asked these questions about, was a debit balance against you of £471 17s. 3d.?—Yes.

2393. Was that amount cleared by a cheque of the Dynamite Company?—Yes.

2394. (*Mr. Van Hulsteyn.*) With regard to these Ermelo shares, you are not quite clear upon them? You sold these Ermelo shares to Baierveldt and Holbaum, as a matter of fact the cheque came from them. Will you kindly tell me where you got these Ermelo shares. Did you buy them from Mr. Tosen?—Very likely I did.

2395. Mr. Tosen was also a member of the Raad?—Yes, but I think I am entitled to buy shares from Mr Tosen or anyone else.

(*Mr. Van Hulsteyn.*) We will discuss that presently.

2396. (*Chairman.*) Have you any record of the transaction? Did you keep any account of your investments?—Yes, I did.

2397. Can you tell us how many shares there were? I think there were 4,000 shares?—Yes, I do not know exactly the amount, but I can give it to you later on.

2398. You bought these shares from Mr. Tosen, and when you bought them I believe you drew upon Mr Max Philipp to pay for them?—I do not remember.

2398*. But it may be?—Yes.

2399. (*Mr. Van Hulsteyn.*) What I wish to point out to the Commission is that these shares really belonged to Mr. Max Philipp, and they were paid for by Mr. Vorstman with the proceeds of a draft which he drew on Mr. Max Philipp. (*To witness.*) Is that not the case?—I do not remember; it may be correct.

2400. You paid £1,000 for these shares, did you not?—I believe I did.

2401. You then subsequently sold them for £2,500;—Yes.

(*Mr. Van Hulsteyn.*) (*To Chairman.*) Is it necessary to go into the question of the cost of manufacturing dynamite?

(*Chairman.*) There is the question of manufacturing in this country and importing.

2402. (*Mr. Curlewis.*) I should like to know if Mr. Vorstman can supply the Commission with copies of the agreement between him as a director of the French company and Lippert, entered into in August, 1893. The Commission will find a reference to this in the compendium, pages 72 and 86, paragraph 5, in which the commission to Lippert is fixed. (*To witness.*) Can you tell me or put before the Commission a statement showing the profits made by you or your company, and the profits which the Government have received during the whole period. You know you are appointed by the company as agent, the Government was the principal. It was a State monopoly, and you were practically the agent of the Government for the execution of that monopoly?—I happen to have here a list from 1894 to 1898 of what has been paid out to the shareholders and what the Government got.

2403. I would like you to include that large amount which appears in your account as written off, can you tell us that amount as well, in addition to the amounts received by the shareholders and the Government?—I have not got that before me. I should like to add that we have only written off what is allowed. The Government got their profit before the extra reserve was allowed for.

2404. (*Chairman.*) Are you sure of that?—Oh, yes.

2405. (*Mr. Curlewis.*) We should have a statement of the net profit after paying the ordinary freight and working expenses which the company derived from its agency, and how much the Government received, the Government being the real owners of the monopoly?—That is part and parcel of the contract.

2406. Will you tell me what you call profit in the ordinary way, as a rule it implies the actual excess of receipts over expenditure, that is the ordinary significance of profit?—I call profit what we were allowed out of the contract, and I am prepared to give you a full statement as to that. We wrote off 8 per cent. of the capital, and wrote off the machinery and plant account, and then what remains is profit.

2407. (*Chairman.*) Supposing you as representing the Government said you were aggrieved, and you went to the court for an account, surely before paying the Government anything by way of 20 per cent. on the surplus profits you would be entitled to make proper reserves.

(*Mr. Curlewis.*) Yes, to a reasonable amount; it is not with reference to the question of account, but I submit that this is not a bonâ-fide agency. It is really a State monopoly and for the benefit of the State, Mr. Vorstman being merely the agent of the Government to carry it out. The circumstances under which this Concession was granted amounted practically to giving a monopoly to the Government. It was not the ordinary relationship of principal and agent.

2408. (*Mr. Ashmore.*) (*To Witness.*) During the period you were unable to manufacture dynamite you imported dynamite for sale?—The Government did.

2409. You imported it, and it was sent to you as agent of the Government in South Africa. You brought it up to Johannesburg and sold it, and you took the profits?—The Government got 5s. per case.

2410. The whole of the rest of the profit you took?—You did not pay any import duty in respect of that dynamite?—It was the Government which imported.

2411. Practically you imported it, and no duty was paid. Had you paid duty I suppose the profit would have disappeared?—I suppose so.

1412. (*Mr. Loveday.*) You merely presented the invoices to the Government?—I was agent for the Hamburg company.

2413. As a matter of fact, the Government never had anything to do with it?—Oh, yes.

(*Mr. Curlewis.*) There are certain letters in the compendium written by Mr. Vorstman to the Government, and for that reason I would ask the Commission to allow the compendium to be included in the papers.

(*Compendium put in.*)

Dates of letters referred to:—23rd October, 1893, page 140; 16th May, 1894, page 138; 20th June, 1894, page 142; 24th May, 1894, page 148.

2414. (*Mr. Van Hulsteyn.*) I hand in copies of the European Council's advice having reference to these three items of £9,100, £10,000, and £20,000, by which it is specially provided that they are not to be taken into consideration with regard to the 20 per cent. in respect to the Government share of the profits. (*To Witness.*) Now with regard to Mr. Wolmarans, there is a letter addressed to you by him dated January 28th, 1899?—Mr. Wolmarans was an influential man.

2415. (*Mr. Rooth.*) I am under the impression that he was dead. That letter refers to superseding Mr. Wolmarans on the Board, and he says: "I hope to be able to resume work soon," and he wishes to see you first

if it is so necessary to appoint someone in his place, perhaps simply to sign documents; and he adds: "You know I have heavy expenses, and every penny is very useful." Did you receive that letter?—Yes; but may I explain it? Mr. Wolmarans had been ill, and as he could never attend the meetings of the Board I proposed that he should nominate an alternate. He said, "No," and he then wrote this letter, asking the Board to nominate his son.

2416. (*Mr. Van Hulsteyn.*) So that the office should not go out of the family I suppose. Was he a member of the local board?—The Board was here; in Europe there was a European Council of Advice. Wolmarans wanted to get his son put on as alternate, so that he could get the fees.

2417. Do you know anything with regard to the relationship between Mr. Wolmarans and Lippert in the early days?—No.

2418. You told him the history of a certain promissory note between Lippert and Wolmarans——

(*Chairman.*) It was a question of a debit balance against Wolmarans in the bank.

2419. (*Mr. Van Hulsteyn.*) (*To Witness.*) You told Mr. Max Philipp that Lippert had advanced money to Wolmarans to pay off his overdraft, and Wolmarans asked him to tear up the credit note?—If I said so to Mr. Max Philipp that is what I must have heard. When I became connected with the company in 1891 I think it was a matter of common talk.

2420. "Land en Volk" had an article about it, and it was never answered by Mr. Wolmarans?—People talked that Mr. Wolmarans had a large share in the agency, 2s. a case, but that was not in my time.

2421. It is quite possible that he did get that?—Yes, it is quite possible.

2422. I believe another gentleman with whom you had a good deal to do was Mr. Christian Joubert, the late Minister of Mines. Your company had come in contact with him occasionally?—No, not the Dynamite Company.

2423. You paid £1,000 to the assignee of the estate of Christian Joubert?—I do not remember.

2424. This is the receipt for the £1,000 which you paid on behalf of the Minister of Mines' estate?—(*Paper produced.*)—That is correct.

2425. You ceded your right of action in respect to that £1,000 to the Dynamite Company?—That was the old company.

2426. Did you ever get that £1,000?—I do not know, I will look it up.

(*Shown receipts "Standard and Diggers' News."*)

2427. Do you recognise these documents?—Yes.

2428. The *Standard and Diggers' News* got a regular subsidy, the same as the "Volksstem" in Pretoria?—I do not know about the "Volksstem."

2429. On one occasion they got £1,000 from you?—Yes, for the purposes of the company.

2430. And the "Diggers' News" was in the same happy position?—(*Hesitation.*) Yes.

2431. And the "Cologne Gazette"?—I do not know anything about that.

Mr. Rooth requested permission to examine the document with reference to Mr. Christian Joubert's assigned estate, and said: I see the date of this document is 11th April, 1892, long before this present company came into existence.

(*Witness.*) Yes, two years or more.

Mr. Rooth said he would like to go through the statement of evidence which Mr. Vorstman had handed in.

(*Statement with annexures submitted for Mr. Rooth's perusal.*)

2432. (*Mr. Rooth.*) (*To Witness.*) Have you read the President's speech referred to in this statement?—Yes.

2433. You know the ground on which he urged the desirability of a Government monopoly for such an important business as the manufacture of explosives. And you know that he considered it should be entirely under the control of the Government. Did he give that as his reason?—Yes, he thought it of great importance that the country should be independent of foreigners.

2434. The facts and the statement which you have submitted, are they correct?—Yes they are.

The attention of the witness was called to the following documents by Mr. Rooth:—

Protest of French Consul addressed to the Transvaal Government.

Letter signed by Vorstman, August, 1893.

Letter signed by Vorstman, and addressed to State Secretary, 23rd October, 1893.

Letter from State Secretary to Sir Jacobus De Wet, British Agent, 6th October, 1893.

Letter signed by Jorissen to the State Secretary, 29th January, 1894.

Agreement 6th February, 1894.

Letter 6th May, 1894.

Alterations in Articles of Association made by Vorstman, 21st May.

(*Chairman.*) (*To Mr. Rooth.*) There are two points against you. The first is no announcement was made to the British Government in reference to the manner in which this agreement was being carried out, and therefore it is argued there was a breach of the convention. The other point is that all these arrangements with the Government were not made by the Raad, and it was under the Raad regulations that this contract was entered into.

Mr. Rooth said he should like to know what position the Commission took with regard to this, did the Commission wish him to argue that the Government in approving of these Articles of Association acted *ultra vires*.

(*Chairman.*) Yes.

Mr. Rooth then wished to submit a mass of correspondence on the subject, and

The *Chairman* expressed a hope that only letters material to the case would be handed in.

(*Mr. Rooth.*) Mr. Vorstman sent a letter to the State Secretary on 19th May, 1894, and in reply on the 24th May Dr. Leyds wrote to Mr. Vorstman specifying the obligations towards the Government. These obligations were then limited to what was mentioned in Mr. Vorstman's letters of 16th May, 1894, and October, 1894.

(*Mr. Curlewis.*) I would specially draw the attention of the Commission to this correspondence, because it shows that the parties clearly anticipated political complications. The contract of May, 1894, shows in the most innocent manner:—"The company undertakes to fulfil all the obligations of this company." Then a private letter passed between Dr. Leyds and Mr. Vorstman explanatory of what the obligations would be in the event of any political difficulties. The company was bound to a meaning in alteration of the agreement.

More correspondence put in.

8th June, 1894 (two letters).

16th June, 1894 (Vorstman to State Secretary).

14th July, 1894 (State Secretary to Vorstman).

Letters from Dr. Leyds to the Company, 20th and 24th August, 1894.

Letter, 5th October, 1895, and a chronological statement of what had been done.

THIRTEENTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Tuesday, 23rd October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

DYNAMITE CONCESSION (CONTINUED).

23 Oct. 19 C.

Mr. Rooth continued his references to the correspondence, including letter dated 16th October, 1895, from the Government to the company.

Extract of letter from Hamburg, 19th December, 1895.

Extract of letter from Hamburg, 5th March 1896.

Letter, 16th January, 1896, from State Secretary to company.

Letter 2nd October, 1896 (read previous day).

Extract of Executive Council resolution, page 45 (14th October, 1896).

Letter, State Secretary to company, 22nd October, 1896.

Examination of Mr. VORSTMAN, continued.

Mr. Vorstman.

2435. (*Chairman.*) (*To witness.*) With reference to this letter of 22nd October, you say that Dr. Leyds states that your company was in a position to manufacture 80,000 cases per annum. Was that in consequence of information you gave to him?—I was in the Executive Council and the matter was there discussed. I pointed out that we could manufacture 80,000 cases, but there could be no object in running any risk more than was necessary. The Government came to the conclusion that by having a factory capable of producing 80,000 cases we had fulfilled the contract.

2436. You stated yesterday that you were in a position to make not merely 80,000 cases, but a good deal more. How do you account for Dr. Leyds writing to you that you are only able to manufacture 80,000?—It does not say "only."

2437. Can you account for his writing that, if it was a fact that you could manufacture more?—We could have manufactured more.

2438. In that letter you said that you could manufacture 80,000 cases. Do you say anything more in that letter?——

Mr. Rooth reads letter containing passage as follows: "Our factories are complete and our company is in a position to manufacture 80,000 cases of explosives per annum."

2439. (*Chairman.*) You do not say a word about your being able to manufacture more than 80,000 cases. Surely it would have been material to you to have stated that you could not only manufacture 80,000 cases, but were in a position to produce more. However, you did not do so in that letter?—No.

2440. If you were in a position to manufacture more at that time, why did you ask the Government for instructions that you should erect further factories?—That was in view of a prospective increased consumption. We saw that the consumption was getting bigger.

2441. But according to your case your factories at that time were sufficient to make something like 100,000 cases more in addition to the 80,000 cases. If that were so, why ask for instructions?—That was with a view to prospective consumption.

2442. According to your own case, you were in a position at that time not merely to satisfy the demand of the Government for 80,000 cases, but your plant was adequate to supply something like 100,000 cases more. Why did you ask for instructions to erect more factories?—So that we should have plenty of time to work these factories.

2443. That is your only explanation?—Yes.

2444. (*Mr. Rooth.*) (*To witness.*) With regard to the prospective requirements of the country at the time, although you were able to manufacture more than 80,000 cases, did you take into consideration the probability of a still further increase in the requirements of the country?—Yes, that is what I mean by prospective consumption. I consider that it was necessary to make arrangements for more.

2445. As a matter of fact, how much could your factories produce at that time?—I think they could have produced 200,000 cases.

2446. Then on 6th April, 1897, did you receive a cable from your Hamburg office from the European Council of Advice recommending an increase in the output of nitro-glycerine?—Yes, I remember getting that.

(*Mr. Rooth.*) Here is a copy of the extracts of the meeting which I hand in to the Commission.

(*Chairman.*) The minute book should be here.

(*Mr. Rooth.*) Everything belonging to the company has been taken.

(*Chairman.*) But you have had full access to the documents?

(*Mr. Rooth.*) We could not bring them here; you have got them in your possession, and we have been severely handicapped.

(*Chairman.*) The only restriction was that you could look at the books in the presence of somebody else.

(Extract put in of minutes of European Council of Advice. Meeting held at Berlin, 13th October, 1897.)

2447. In accordance with the resolution of the Executive Council, Article 456, was the price of explosives reduced by 10s. per case?—Yes.

2448. All explosives including blasting gelatine?—Yes.

(The following documents also submitted to Commission:—Resolution of Executive Council Article 585, dated 30th June, 1899. Letter from company to State Secretary, 15th August, 1899. Letter from company to Treasurer General, 15th September, 1899.)

2449. (*Mr. Rooth.*) (*To witness.*) With reference to the old contract, you stated yesterday that the Government had given notice of the cancellation of that contract to the French company. Did the company accept that notice as binding?—No.

2450. What happened?—Some negotiations went on, and finally it was settled that the matter should be ar-

ranged by arbitration. I remember well that the arbitrators came out from Europe. At all events some time passed before we could get the arbitrators here. In the meantime Government were glad to enter into another arrangement. The Government were informed that they had a weak case, and they were anxious to settle.

2451. And the only way in which any new satisfactory arrangement could be effected was by giving this new contract to you as agent for the company?—Yes, that was understood.

2452. This statement of the sales of explosives and the production of nitro-glycerine handed in yesterday, is that correct according to your books?—Yes, that is made up from our books.

2453. (*Chairman.*) This witness has said he knew nothing practically about the sale, and he promised to produce a witness who did. He said he did not know with any precision about the books.

2454. (*Mr. Rooth.*) I will prove the correctness of the statement by a witness. (*To witness.*) Did the company endeavour to utilise local products, sulphur, for instance?—Yes, we have been trying to do so, and we were just on the point of signing a contract for a large quantity of pyrites when the war broke out.

2455. With whom?—The Landlaagte Estate Gold Mining Company.

2456. (*Chairman.*) You said you were endeavouring to use local products; but as a fact, did you use them during the seven years in which you were trading?—It was quite a new thing.

2457. Did you use any Transvaal product during those seven years?—Very few.

2458. Practically nothing was used?—Yes.

2459. Did you make experiments?—Yes, we got a chemist out from Europe on purpose to make these experiments with pyrites found in the country, and it took over a year before he came to any final result. We took a great deal of trouble in order to enter into contracts for a supply of pyrites. We tried all over the country to get local products.

2460. What was the difficulty in making these contracts?—There was a difficulty about guhr, for example. We approached people who had guhr on their farms, but as soon as we did so, they commenced to talk about £10,000, which is an absurd price, because guhr in Europe is very cheap.

2461. Was there any trouble with regard to the railway?—Where the guhr could not be found near the railway everything had to be brought by ox-wagon.

2462. Did the company lose any time on account of the Jameson Raid in January, 1896?—Yes, we did.

2463. About how much?—Certainly a few months.

2464. Will you explain to the Commission what the prices of explosives are now in terms of the contract of December—how does it work out?—The prices remain the same as the year before, 75s. per case for dynamite No. 1.

2465. How much for blasting gelatine?—It was 97s. 6d. per case, but there was this new arrangement with the Government, that instead of getting 5s. per case and 2s. 6d. minimum of the net profits, the Government should get 17s. 6d.

2466. That is in place of the 20 per cent. surplus profits?—No.

2467. Was it instead of the 5s. and 2s. 6d.?—Yes, owing to this new arrangement, we could reduce the price by 10s. to the mines, so that for dynamite No. 1 the price was 65s., and for blasting gelatine it was 87s. 6d.

(*Mr. Curlewis.*) I should like to draw the attention of the Commission to the fact that the reduction in price of 10s. per case was simply owing to the Government foregoing a portion of its profit. The Dynamite Company lost nothing whatever.

(*Witness.*) May I state that a year before the Government had already given up 5s., so that actually we had to pay 2s. 6d., and now we gave the Government 17s. 6d.

(*Chairman.*) It depends how much their 20 per cent. was worth. I know it never came to very much, but the question is what it ought to have been.

2468. (*Mr. Rooth, to Witness.*) With regard to writing off for reserves and explosives funds, the profits which the Government had to get, were they calculated on a basis of the amount less deduction of that?—Yes.

2469. The Government share of profits was calculated before that was taken off, so that the profit of the Government was not affected by this writing off?—No.

Mr. L. G. Forstman.

23 Oct. 1900.

(*Mr. Van Hulsteyn.*) Do I understand that Mr. Rooth is going to call somebody else with regard to the finances of the company and the manufacturing cost?

(*Mr. Rooth.*) What do you mean by finances?

(*Mr. Van Hulsteyn.*) Such as that question of writing off.

(*Mr. Rooth.*) If I may be allowed to have the books, one of the witnesses I intend putting in will be able to give evidence on that point.

2470. (*Mr. Ashmore.*) I want to understand clearly about the importation of dynamite by the Government. What happened is this, I take it. You were unable to supply the dynamite, and you applied to the Government to import it for you. Was that it?—The contract of the 24th May states that in the meantime the factory should be erected, and during that period the Government should import the materials out of which we manufacture.

2471. You applied to the Government to provide you with materials?—Yes, and the Government then appointed Mr. Klimke and myself to act as agents.

2472. Supposing that you, as representing the dynamite monopolists desired to obtain materials from England, you and Mr. Klimke applied to get them?—Yes, I knew what was wanted.

2473. You yourselves applied to import?—Yes, more or less.

2474. You yourselves then wrote to Nobel's to send the materials on to you?—Yes.

2475. To you as the agent of the Government?—Well, the Government gave us the agency. The contract says the stuff was to be sent to us as manufacturers.

2476. Nobel then sent the stuff to you. You, as agent of the Government then delivered it to yourself as agent of the company?—No, they sent it direct to the company.

2477. Who paid for it?—In the first instance the Government.

2478. Did the Government pay Nobel?—Yes.

2479. Did the Government actually hand over the money to Nobel's, or did they debit the Government?—No, they gave a cheque payable here.

2480. To whom did they give the cheque?—(*Hesitation.*) To me.

2481. You yourself, as agent of the Government, presented yourself as agent of Nobel's with a cheque. Was that cheque ever cashed?—Either when the draft was obtained or the money was remitted to Europe.

2482. When you sold the dynamite, you refunded this money to the Government?—Yes.

2483. How long would they be out of their money?—It all depended on the sales. We paid the Government according to what we sold. If we sold 15,000 cases a month, I would refund to the Government the money for that plus their royalty.

2484. Was the Government ever out of pocket in any considerable sum?—Yes.

2485. What do you call a considerable sum?—I should say £100,000.

2486. And on that you paid no doubt?—No.

2487. Can you justify that mode of importing materials under the provisions of the Raad Regulations of 1893, or do you justify it under the contract?—Under the contract.

2488. But you cannot justify it under the Volksraad Regulations?—I should say also under the Regulations, because the Government can make any such arrangements as are necessary.

Mr. Rooth referred to Section 17 of the Regulation.

2489. (*Chairman.*) Did you keep private letter books yourself in Pretoria?—I did.

2490. These letter books would contain copies of the letters you wrote to Mr. Max Philipp?—They would.

2491. What has happened to these books?—I have destroyed all the letter books except the current one, the one for 1900.

2492. How many letter books went into the holocaust?—I cannot say exactly, perhaps four—four letter books for four years.

Mr. L. G. Vorstman.

23 Oct. 1900.

2493. Why did you select that particular period for destroying four letter books?—I think I commenced to do so after the Paardeberg affair.

2494. You saw that contingencies might arise after that?—Of course, it was a private letter book.

2495. Have you Mr. Max Philipp's letters to you during 1900?—Those which came since the last months or so.

2496. But before then?—No, I have not, I destroyed them.

2497. You went fairly often to Europe?—I have not been there since 1897.

2498. I suppose Mr. Max Philipp would have a letter book in the same way that you had one?—I think so.

2499. If we have the pleasure of seeing him in Europe, and if he has any criticism to make upon the copies of his letters, he will have the means of checking these copies with his own letter book?—I do not know. I think it is probable.

2500. And he would always have your replies to his letters?—Yes.

2501. (*Mr. Loveday.*) You told us yesterday that the new contract had been obtained for the old company?—Yes, practically.

2502. Well, then you would arrange all the matters in connection with the new contract of the 24th May, 1894?—No, that was arranged before.

2503. Can you inform me why Dr. Leyds on 14th September, 1894, made a statement in the Raad to the effect that they were still settling the date of arbitration?—I say there were negotiations about arbitration. It was first decided that we should send in a protest against the cancellation.

2504. (*Mr. Loveday.*) But you had already settled with the old company. They were to get so many shares?—That was done later in Europe.

2505. You will find the number of shares that was to be given at that very sitting was 182,500?—They were not given. I will tell you how that was. In Europe in 1894 a contract was made between Nobel's and the French Company, of which the Government must have known, as it was mentioned.

2506. But on 14th September, 1894, Dr. Leyds made a statement in the Raad that they were still settling the date of arbitration?—Everything was settled, and the new company was floated in June.

2507. Was this not for the object of throwing dust in the eyes of the Raad members?—I have not that minute before me.

(Witness shown minute, in which Dr. Leyds was reported to have made the above statement in reply to a question asked by Lucas Meyer.)

(*Witness*) This report shows that the State Secretary remarked that the arbitrators had been nominated, and had been settling the date of arbitration.

2508. (*Mr. Loveday.*) What was his object in making that statement?—I do not know.

2509. Was it not to mislead the Raad? You know perfectly well the question raised then was that there were international difficulties, and it was going to arbitration for that purpose. Was it not to influence many of the Raad members to support the Dynamite Concession as it stood. It would not have had, but you had Dr. Leyds to support you?—It says they had been busy.

(*Mr. Loveday.*) It says they "are" busy.

(*Mr. Curlewis.*) Mr. Rooth said just now that the Government share of the profits was arrived at quite apart from the amount written off and put to reserve. I wish to ask the witness when the company began to fix the Government share of profit quite apart from the amount written off.

(*Witness.*) I think the Government was entitled to profits from the beginning.

2510. Do you mean 1897-1898?—I think from October, 1896.

2511. In 1896, as a matter of fact, the Government share came to £1,912 11s. 4d., and at the end of 1896 you had actually written off £200,000?—I do not know by heart. The Government only commenced to get a share of the profits after we commenced manufacturing, which was at the end of 1896.

2512. That was 80,000 cases?—Yes, practically they only did that after the whole matter was written off.

(*Mr. Curlewis.*) With regard to the question put by Mr. Ashmore, the witness states that the amount which the Government was out of pocket was £100,000. As a matter of fact it was more than that. In 1896 it was £200,000.

(*Witness.*) I made a rough calculation of what amount would be imported.

2513. (*Mr. Curlewis.*) You paid no interest to the Government?—(*No answer.*)

2514. (*Mr. Rooth.*) With regard to the purchase of explosives by the Government, were there sums specially voted by the Volksraad for that object?—Quite so.

Mr. Rooth intimated that he would hand in all the above-mentioned resolutions.

Mr. ALBERTO PHILIPP, sworn and interrogated.

Mr. A. Philipp.

2515. (*Chairman.*) You are chairman of the local board of this company?—I am a director of the company.

2516. It was stated yesterday that you were Chairman of the board in Pretoria?—That is a misunderstanding. My father is Chairman of the company in Europe. I am only a director of the company on the board here, and Deputy Chairman along with the witness who has just left.

2517. You are a director?—Yes.

2518. Managing director?—Well, yes. I manage the affairs of the company here together with Mr. Vorstman.

2519. On all matters of importance, you confer together, you consult with one another?—Well, as a rule, but it quite depends upon what you mean by consult.

2520. Do you have discussions together?—No, we don't.

2521. When were you appointed?—I was appointed a director of the company in April, 1896. The European council passed a resolution appointing me as director to act with Mr. Vorstman, and in all matters of dispute we had to do so, but Mr. Vorstman's opinion was to prevail. Our relations were not very friendly. It was not exactly a sort of consultation, but he told me the effect of anything very important, and he either made me acquainted with all letters to the Government, he either showed them to me or I read copies.

2522. How long did this continue?—For four or five years.

2523. And you had in all matters of importance to defer to his opinion?—Yes, we consulted to a certain extent.

2524. If there was any difference of opinion between you and Mr. Vorstman, do you mean to say you did not confer with him on important points?—Yes, I conferred with him.

2525. Were you present yesterday in Court?—Yes.

2526. Were you aware of these letters written by your father to Mr. Vorstman to which reference was made?—Yes, a few of them.

2527. How do you understand the direction to spend secret service money in the interests of your company here? What interpretation do you give to that?—The interpretation I give is this: Our company was unjustly attacked. We maintained that we had a contract which we kept *bonâ fide* up to the last, and if we are unjustly attacked we have to take all possible means to protect ourselves.

2528. What were the means which you thought yourself justified in taking?—Legal means.

2529. Any others besides legal means?—I do not use the word "legal" from the point of view of a lawyer, but from the point of view of a merchant.

2530. Did the legal means from the point of view of the merchant embrace bribing members of the Raad and the Executive?—I was never aware that members of the Volksraad were bribed.

2531. Did you not receive express instructions from your father to do so?—I received letters intimating to a certain extent the course we ought to take because the Mines were opposing us and bribing the Raad.

2532. Did your father ever say that in any letter?—Can you point to a single letter in which Mr. Max Philipp alleged that the Mines were bribing the Raad?—

(*Hesitation.*) I am not quite sure. I received lots of letters, and they are dated since I was appointed in 1896. I cannot remember everything.

2533. You have made a charge against the Mines that I know nothing of, and that charge must not be made, or it must be justified. Can you mention a single letter in which even your father alleged that the Mines had bribed members of the Raad?—Well, as I say, if I looked through the letters I might be able to reply positively.

2534. You shall have a chance of doing so, but be that as it may, do I understand from you that your father instructed you directly to bribe members of the Raad?—No, my father never instructed me directly, because I did not know any member of the Raad except one or two.

2535. You said just now you were authorised to bribe members of the Raad because the Mines were doing so. Now you say you were never authorised to do so. Will you reconcile these two statements?—My father might have intimated to me that these were the means to be employed.

2536. And if he intimated to you that these were the means to be employed, did he not see that you were in ample funds to fulfil that purpose?—(*Hesitation.*)

2537. You know he did. There were sums of £9,100, £10,000, and £20,000?—I never had anything to do with that. I never saw anything of these amounts except in the books.

2538. You say you were made a director in April, 1896?—Yes.

2539. Do you remember getting a letter from your father dated 17th April, 1896, and stating, "I have spoken to Mr. Lippert, and he will give me a letter to the President, and I will then myself communicate my reasons to Dr. Leyds, and you must then look after it that those Raad members who at the time voted against us now accept this alteration of the contract"?—I cannot remember unless I see the letter.

2540. You were here in April, 1896, when that letter was written, and you remember what a critical time that was. It was the time when the 2½ years expired for the erection of the factory?—Yes.

2541. Then there is a letter dated April 7th, 1896. What do you gather from that letter?—I did not know any of the Raad members.

2542. Did you write to your father to say so?—I must have done so.

2543. If you did, that letter will be in your father's possession?—Yes, if I sent such a letter away.

2544. Do you really mean to say that you ever told your father you did not know any members of the Raad, and could not say as to whether they would vote for or against the amendment?—I cannot say positively what I replied to this letter.

2545. Are you prepared to say that you ever refused, so far as you were concerned, to put into force the instructions which your father gave you?—(*Hesitation.*) No.

2546. Then I may take it that if he gave you instructions to look after the Raad, you did not write back and say you could not do so?—No, I never refused.

2547. Then there is a letter of the 3rd June, 1896, from your father which states that the ring price has been put very high, and that gelatine cannot be bought under £165 per ton c.i.f., and he says that it is about the same price in Johannesburg. Do you remember getting that letter?—I cannot remember.

2548. That refers to Durban, does it not?——

(*Mr. Van Hulsteyn.*) It is a letter with regard to an appointment of an agent in Durban. Mr. Max Philipp discusses in that letter the ring price of gelatine in Durban, and says it is about the same price in Johannesburg. He says it is very high, which clearly shows what he thought of the price in Johannesburg.

2549. (*Chairman.*) (*To Witness.*) There is this passage in the same letter: "You must convince Dr. Leyds that it is not possible to put up a factory for a monthly consumption of 15,000 cases where for the least repairs of such highly-complicated machinery materials have to be got from Europe"?—That is correct.

2550. Did you convince Dr. Leyds about that?—I may have talked to him.

2551. Did you use any other means than argument?—No; I did not.

2552. That you are sure of?—Yes.

2553. Did you never make Dr. Leyds a present of shares?—Never.

2554. Or of money?—Never.

2555. Did you know he was obtaining shares at the expense of your company?—I know of one instance, that is the shares in the Agency Company.

2556. You knew that?—Yes.

2557. Was that one of the methods by which conviction was brought home to Dr. Leyds?—I have not used that as an argument. Whatever I did when I received this letter was to argue with him.

2558. Yes; that is the point. Were your arguments convincing?—I do not remember. With all the transactions with the Government I hardly had anything to do, except that. With the other members I did not converse.

2559. Did your father ever mention the subject of Dr. Leyds to you?—In what respect?

2560. The subject of giving him shares?—Yes. I knew of this one share in the agency. That is the only instance I know of.

2561. Then there is a letter dated 23rd July, 1896, which states: "I am writing to Mr. Vorstman by to-day's post my ideas with regard to a thorough claim for damages on account of the smashed-up revolution, and also my ideas as to the Volksraad; I do not repeat them to you, since you will see the letter of Mr. Vorstman." Did he show you that letter on the same day?—I cannot positively swear, but if I could see my reply it will show if I mentioned it.

2562. Then this letter goes on to say: "You or Vorstman must manage that we have the majority of the Volksraad, cost what it may, in order to be allowed to import for years more." Of course, the "cost what it may" must be taken in a limited sense, and you need only telegraph me a word how much is to be spent so that I may telegraph my approval, but something must take place so that we get through our demands." Do you remember receiving that?—Yes.

2563. It gave you carte blanche to spend money?—Yes.

2564. Did you carry that out?—No.

2565. Did you ever write a letter refusing to carry it out? Did you leave your father under the impression that you were carrying it out?—That depends upon what my reply was.

2566. You surely know if you were asked to bribe. It is not an everyday occurrence. You were instructed to spend what money you like, and you surely know what reply you made or what action you took?—I never acted upon it.

(Witness shown his own reply to above letter, in which the following passage occurred: "With regard to the contents of your letter to Vorstman, he is still in Durban, but will return to-morrow evening, so that we can discuss your letter on Monday.")

2567. When Vorstman returned did he show any signs of surprise or annoyance about the contents?—No.

2568. On the contrary, the letter says it is interesting, and you would surely discuss the matter with Vorstman; I presume you did?—Yes. I suppose so.

2569. What was the result of that discussion?—I really do not remember.

2570. I want to know whether you say you forget what the result of the discussion was upon the direct injunction to you to bribe the members of the Raad. Do you pretend to say that you do not know what the result of that discussion was?—As far as I am personally concerned I cannot exactly say. After the discussion with him I left it in his hands.

2571. Knowing perfectly well what he was going to do? That he was going to see the members of the Raad and carry out your father's instructions?—Yes, if necessary.

2572. Of course, the question of importation was one of great importance. It was a question for the Commission. A certain amount was voted every year?—So far as I remember we could not do much in that matter.

2573. We heard yesterday about Mr. Klimke, and we know what his position was. He was the adviser of the Government, and, I think, a colleague of Mr. Vorstman as agent for the importation of dynamite. Now, do you remember that Mr. Klimke had been an opponent of the

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Dynamite Company?—I do not remember that; it was before my time.

2574. This letter deals with an operation to which Klimke was going to be subjected. It expresses a hope that the operation would succeed, as "with him the chances of the Gold Syndicate will improve or fall." In that Gold Syndicate you were interested along with Vorstman and your father?—Yes.

2575. This letter says, "I do not know whether I told you that Klimke was not satisfied with the monthly payment of £50, and I have paid him out here a bonus of £1,000. I prefer this, as this item will not any more appear on the books, and I hope I have an easier gain to sign a further contract with him." How long had that monthly payment of £50 to the Government Technical Adviser been going on?—I am not sure, but it may have begun in September, 1895.

2576. We understood yesterday from Mr. Vorstman that there was a conversion of Mr. Klimke to the views of your company. Perhaps the date of that conversion might enable you to say how long that £50 a month had been going on?—I cannot swear how long it was going on.

2577. It might have been going on during 1896?—Yes. Mr. Klimke went away in the beginning of May for this operation.

2578. Then in a letter of 22nd April, 1897, your father writes to you:—"I have a feeling that Dr. Leyds will do everything to help us after we have arrived at a decision to carry it through, and it must be then your exertions through Wolmarans and friends there to lead the matter in a proper direction, so that on the return of Dr. Leyds the people are already prepared for it." That letter implies that the whole thing depended not on Vorstman's, but on your exertions?—That was in April, 1897. Mr. Vorstman might have been in Europe.

2579. When Mr. Vorstman was out of South Africa, and in Europe, these matters came entirely into your hands?—Yes, it only happened once.

2580. Did you use exertions through Wolmarans?—I used arguments with Wolmarans; it was at the time of the Industrial Commission.

2581. That was a very important time to exercise an influence on Mr. Wolmarans and his friends. You recollect that?—I do not know what this refers to.

2582. It was at the time when Dr. Leyds and Vorstman were in Europe?—My father had a conversation with Dr. Leyds in order to stop the agitation against the Company. During that conversation, my father proposed certain schemes to Dr. Leyds how to do away with the agitation in Johannesburg. It refers to that. My father says he feels that Dr. Leyds will do everything as soon as we arrive at a conclusion to help us, and he says also that I should get Mr. Wolmarans and our friends here to work in that direction.

2583. Wolmarans was a member of the Executive Council, and he was also a Director of your company, getting £600 or £700 a year?—Yes.

2584. What other consideration did he receive from your company?—He received once a bonus.

2585. Of how much?—I am not quite sure. It was £1,000, I think.

(*Mr. Van Hulsteyn.*) I think he is referring to that 5,000 shares mentioned in a letter produced yesterday. Vorstman was left a certain discretion to deal with 5,000 shares.

2586. (*Chairman.*) There is a further letter of 16th April, 1897, also *apropos* of the Industrial Commission. In that letter your father writes: "I do not understand certain things, as we have fulfilled our contract. To the lying reports we cannot attach any importance. I have no doubt you will convince Dumont so that he will defend our interest as Klimke has already recommended him to do." Dumont, I understand, was a member of the Industrial Commission and was also a Government representative, so that you are directed to convince Dumont, and an indication was given that he should defend your interest as warmly as Klimke had done. Did that suggest to you the means of making him as warm an advocate as Klimke was? Did it not suggest to you the method of persuasion?—No; I talked to him.

2587. It did not go beyond the cold argument of reason?—I asked him to lunch, or stood him a drink.

2588. Some of your luncheon charges are of a generous kind, there is one sum of £120, was that at your own expense?—No, it was at my father's expense. We went to the Rand Club, which is a very expensive place.

2589. Then there is a letter to you from your father, dated the 30th June 1897, in which he says: "We can reckon with the President, Leyds, and Klimke himself, who almost form a Government within the Government, for these three gentlemen are almost the only ones who really want to carry out the contract properly. That Leyds has enemies out there cannot be helped, for these gentlemen in Johannesburg are sure to be filled with hostility to the officials who do their duty properly"?—

2590. Then there is a letter, dated 2nd September, 1897, in which you were asked to discuss certain things with Vorstman and Dr. Leyds; there was a newspaper called the "Volksstem," and an individual named Engelburg. He received many considerable sums from you?—Not from me. He may have received them from the company.

2591. Through whom?—Mr. Vorstman.

2592. With your knowledge?—Yes.

2593. I think another editor was also in your pay?—Yes, the "Standard and Digger's News," Johannesburg.

2594. Was the amount considerable in each case, or did you obtain their services fairly cheap?—I think the "Standard and Digger's News" received £50 a month, but I am not quite sure about the figures.

2595. You received another letter from your father on 18th August, 1898, which was another critical period, after the reports of the two Industrial Commissions, and there was continual agitation against your company. That letter said: "Klimke has spoken brilliantly, and we are immensely thankful to the man for his friendly services. It is to be hoped our business will at last be settled, and I am writing by this day's post to Vorstman that I expect decided news in a few months that either our company has received an absolution from the Volksraad or also that the extension has been accepted by the Volksraad." What was the occasion on which Klimke spoke so brilliantly?—I suppose it must have been in the Volksraad.

2596. What about?—About our company. Defending its interests from a technical point of view. In his report he mentions the fact of the factories being built.

2597. In that letter there is a reference to whitewashing by the Raad, what does that refer to?—It means that the Raad confirms everything so far done, that the company has kept its contract.

2598. Is this cause and effect? The date of that letter referring to Klimke's brilliant speech was 18th August, 1898, and on the 5th October, 1898, there is another letter referring to Klimke again, which states: "I do not mind crediting him with £3,000 as soon as the affair has been accepted by the Raad. He was granted £2,000 for the current year. The arrangement with him was not cancelled, and therefore the remaining payments are always at his disposal. Considering his services, there is no objection to increase the £2,000 this year to £3,000 on condition that in the Volksraad our rights will be maintained and upheld." That was done, was it not?—Yes.

2599. Then there is the finish of this letter: "About our dynamite concession, I have written in full to Vorstman, also about the unfavourable reception to Dr. Leyds in Berlin. Our chief object is to get the business settled as soon as possible, for before we know where we are there will be war between England and the Transvaal. I would not like to fall into the hands of the English before our concession has been recognised by the Raad, and before we have a clause securing us an extension. In either case England will recognise the concession, then we can safely look to the future. Hurry up Smuts to hand his report in, of course, only favourable, so that the Volksraad can give it its blessing." This was in October, 1898, and your father states clearly enough what his view of the position was. Smuts was the State Attorney?—Yes.

2600. You were to take care that he should hurry up his report so that the Raad should give it its blessing?—I never saw Mr. Smuts.

2601. Were you home in August, 1899?—I had just arrived from Europe, or I was on my way out.

2602. Had you been in Hamburg?—Yes.

2603. Were you present at the board meeting at Berlin in April, 1899, which authorised an expenditure of £20,000?—I was present at the meeting in Berlin—I don't remember the date.

2604. It was some time in that year. We were told yesterday how £9,000 was granted in 1897, £10,000 in

1898, and £20,000 in 1899. You were in Europe in 1899. and I suppose you knew of the £20,000 being granted as secret service money for transmission here?—Well, I did not know it was for transmission here. A resolution was passed, and the Chairman was authorised to dispose of a certain amount.

2605. You knew of that?—Yes.

2606. When did you arrive here in 1899?—It would be about the month of August.

2607. Let me remind you. War broke out in October. You knew there was a great question between your opponents and yourselves. Your opponents alleged that the Raad had never authorised this contract?—Yes.

2608. War being imminent, it appeared to be vital to get some recognition out of the Raad before war broke out?—Yes; at that time, we hardly expected war.

2609. You were aware of the importance of the occasion?—Oh, yes.

2610. Did you confer with Vorstman as to the best means to be taken to get the authority of the Raad?—Yes.

2611. Did you agree with him to employ this £20,000 in whole or in part to convince the members of the Raad?—I agreed with him to convince the members.

2612. You have told us the methods with which in 1896 you thought it right to enforce that conviction. Do I understand that you arranged with Vorstman as to the way in which the Raad members should be persuaded, leaving the details to him?—Yes.

2613. With a clear understanding that the money should be so used?—He would do exactly as he thought fit.

2614. You were the confidential correspondent of your father, and you received instructions again and again in this matter. Please give a plain answer. Did you not know perfectly well that this money which your father had directed to be spent was going to be spent in bribing members of the Raad?—Not all.

2615. But some?—Yes.

2616. Do you know a man named Breytenbach?—No.

2617. Have you heard of him?—I heard of him yesterday for the first time.

2618. If he asserts that he was given money to bribe the Raad. and did so, that would be in conformity with what you have said just now were your father's instructions?—If he says so; but I did not give it to him.

2619. Mr. Vorstman did not deny that he gave him money, and if he spent it in the way that I have put to you, viz., in bribing members of the Raad, that would be in conformity with your father's instructions?—If he says so; but I did not give it to him.

2620. (*Mr. Ashmore.*) Do you keep accounts of the money spent on account of your company?—Yes.

2621. Is this £20,000 passed through your account?—No.

2622. It was remitted direct from home?—Yes.

2623. All this money was drawn by Vorstman, and not by you?—I had nothing to do with it.

2624-5. (*Chairman.*) You have a private letter book here, Mr. Philipp, and there are certain passages to which I wish to draw your attention. On page 227 of No. 2 letter book, 2nd May, 1897, there is a reference to your intention to see Wolmarans. Then on the 15th May, there is a further reference to discussion with Mr. Wolmarans. Again on the 23rd May, there are further discussions with Mr. Wolmarans. "You state I only say I have not called on anybody yet, but I will do so in the course of next week on the President and Mr. Wolmarans." What was the subject?—I had to tell them I was back from Europe.

2626. In your letter of the 15th May, this is in reply to the letter about the various schemes, you state "So far I can say I discussed the matter with Mr. Wolmarans. He said that the Government would be prepared to meet us in certain respects to obtain a reduction of the price." Then your further letter of 23rd May, was that also upon some matter of discussion with Wolmarans?—Yes, I suppose so.

2627. Then on 28th June, 1897, there is a reference to a Mr. ——— (no name is given), with regard to the Industrial Commission—who is that?—The writer of the letter, that is myself.

(*Mr. Van Hulsteyn.*) He refers to a conversation which he has had with a certain gentleman with regard to the Industrial report then being prepared. That letter goes to show that the gentleman in question was one of the members of the Industrial Commission.

2628. Was that Mr. Schmidt-Dumont?—I suppose so.

2629. Throughout this year 1897, did you have, as your letters indicate, constant discussion and communications with Wolmarans?—Yes, that was only during the time Vorstman was in Europe, when I always took up his business.

2630. I see there is another paper mentioned, the *Cologne Gazette*; there was a payment in that case, to a correspondent, was there not?—There was one payment, I think.

2631. On page 138 of letter book 3, there is a reference to £30 increased to £50?—I recollect paying Dr. Gehl. He wrote an article in opposition to the company, and I went to see him, and he said he had to make his living. I tried toget him on our side, and he got this money.

2632. (*Chairman.*) He took a more amenable view from that time?—He only wrote one more article of a different tone, and then he went away.

2633. There is a letter of the 26th August, 1899, in which you write to your father with regard to a claim by Mr. Vorstman for a special bonus for the carrying through of his business in the Raad. Do you recollect that. It is in letter book 3, 308. You say in that "am I to get anything of it?" You would not have made that enquiry unless you had a claim to some merit in the operations?—Yes, I asked for a bonus myself.

2634. You would not have done that, of course, unless you considered your services were of some merit?—No.

2635. There is an account against the Government of the Transvaal, letter book 3, page 376?—I remember that.

2636. It was in respect to some secret mission? What was that?—I prefer not to reply in public. I explained to Mr. Van Hulsteyn all the circumstances, and if possible I should not like to have this discussed in public. It has nothing to do with the company, and has nothing to do with political matters. I mean the money, or the mission.

(*Chairman.*) We will consider whether it will be necessary to have this mentioned in public, but we may have to ask you.

(*Witness.*) If possible I should not like that to be done. I am quite willing to give you all the information.

2637. (*Mr. Van Hulsteyn.*) The gentlemen whose names we have heard, were they the only Government employees whom your company were paying. Were there any other Government employees in your pay?—I have not heard of a single one who was in our pay.

2638. You never heard of a man of the name of Rissik?—No, he has not been mentioned.

2639. Surely you know Mr. Gerhardus Rissik? What is his business?—I do not know what he is doing now.

2640. Is he not inspector of explosives on behalf of the late Government?—I believe he was.

2641. And he was formerly a clerk in your company's employ?—Yes.

2642. And he then left?—Yes.

2643. You then arranged that he should get a Government position?—Yes.

2644. You arranged that?—Yes, I suggested it.

2645. He was getting £1,000 from the Government. He was to get £1,200, but they would not give it?—No, no, no.

2646. The former inspector of explosives was engaged with a promise of getting £1,200 per annum. When he left, Mr. Rissik applied for the position, but it turned out that the salary was only £1,000. Then I believe your company agreed to make up the difference of £200?—Yes.

2647. How long has he received that?—Is he still receiving it?—No, not now.

2648. (*Mr. Ashmore.*) His duty was to report on the factories and explosives?—Mr. Rissik has been connected with our company for a long time, and when the former inspector of explosives left, I recommended him as I considered him a most suitable man. He had also to look after the execution of dynamite regulations, and was acquainted with the law about transport, storing of dynamite and safety. There was really nothing in it,

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and our making up the difference in his salary was a pure act of friendship.

2649. (*Mr. Loveday.*) The former inspector of explosives, Mr. Krige, he was also one of your employees, and left your service to enter the Government service?—No, he was employed in Europe after he left our service by Mr. Klimke on our recommendation. We rather preferred to work with people whom we knew could carry out these regulations.

2650. (*Mr. Ashmore.*) His duty was to see that your company and other companies complied with the law?—Yes.

2651. And you paid him £200 a year out of friendship?—Yes.

EDWIN EMMETT, called; and Examined.

Mr. E. Emmett.

2652. (*Mr. Van Hulsteyn.*) I think you live at Vryheid?—I do.

2653. You are manager of the Board of Executors there?—Yes.

2654. As manager of that board, have you come across in business one Hendrik Breytenbach?—Yes, frequently.

2655. What is he?—He is a farmer.

2656. Do you recollect if you saw him some time last year?—Yes.

2658. Did you have a conversation with him?—He in August, 1899.

2658. Did you have a conversation with him?—He was frequently in my office.

2659. What did he say to you upon these occasions?—With regard to what?

2660. With regard to any business transactions——

(*Mr. Rooth.*) I would point out that evidence of this nature should not be allowed. Whatever Mr. Breytenbach may have told this witness was not said on oath.

(*Chairman.*) That is quite true if these proceedings were under the strict law of evidence, but this enquiry is not being conducted upon such strict lines.

2661. Now what did Mr. Breytenbach say?—Well, we had a conversation about business matters, about different advances which I had made to him from time to time, and promises to repay in course of time.

2662. At the end of August, he had received some money from the Bank of Africa. And did he repay you for these advances?—Yes.

2663. In connection with these repayments, did he make a statement?—I knew from time to time that he received a large sum of money.

2664. Did he make any statement with regard to that money?—Yes.

2665. What did he say?—He told me it was on account of his work during the session of the Raad in August, 1899, he had received £6,500. That money he had received in instalments. One instalment was £1,000, out of which he paid me. The money was remitted to him through the Bank of Africa on Pretoria, and he paid me the amounts due to my board. Another amount was a draft for £3,500, which was cashed at the National Bank, and there was an amount of £2.000 which he received in cash and brought down with him.

2666. Did you arrive at that information direct from him?—Yes.

2667. You knew him as a farmer, and had large transactions with him. Did he make any statement to you as to where that money came from?—Yes.

2668. What did he say?—That he had received it from Mr. Vorstman.

2669. Did he say for what purpose?—That it was to be used to influence members of the Raad.

2670. Is this Breytenbach any connection of the late President?—He told me he was. He also called him "old zwager" or brother-in-law.

2671. You did not investigate that?—No.

2672. Is Breytenbach now in the country?—Yes.

2673. Where is he?—I think in the district of Vryheid.

2674. Have you seen him lately? Are you sure he is there?—Yes, I am positive, he is at a place called Waterfal, belonging to Mr. Louis Botha.

2675. When you had that conversation with him, did he mention any members of the Raad whom he had been bribing?—Yes, Mr. Stoop, Barend Vorster, and Louis Botha. He might have mentioned more, but these three particularly I remember well.

(*Mr. Van Hulsteyn.*) (*To the Chairman.*) Two of these, Stoop and Botha, are members of that Raad Committee who sent in the majority report on August 15th.

(*Mr. Rooth.*) I do not see what effect this evidence can possibly have. In fact, it is absolutely no evidence.

(*Chairman.*) I think I was hasty in saying that the evidence of Mr. Emmett was not strictly evidence under the technical rules of law. Mr. Vorstman would not deny that he paid £3,500 to Breytenbach.

(*Mr. Rooth.*) Yes, to Breytenbach.

(*Chairman.*) He is pretty well identified as an acquaintance of President Kruger, and Vorstman paid it over to him with a certain object. For that purpose Breytenbach was the agent of Mr. Vorstman. An admission by an agent of the purposes for which money has been given by his principal is evidence.

(*Mr. Rooth.*) Certainly, if you assume your premises, but the identity of this Breytenbach has not been absolutely established.

(*Chairman.*) He receives £3,500 from Mr. Vorstman in the bank. That is not denied. Information is before us which will prove that a draft was drawn upon the bank at Vryheid and handed to Breytenbach for £3,500, and it was cashed by him at Vryheid. It is not an extravagant inference that the gentleman who cashed it and who lives there is this same Breytenbach. The onus is on you to rebut this inference.

(*Mr. Van Hulsteyn.*) We have done what we could to find Mr. Breytenbach, but we are informed that he is outside the British lines.

(*Chairman.*) In my view it is more in Mr. Rooth's interest, if he denies what is said, to call Mr. Breytenbach.

(*Mr. Rooth.*) This is rather short notice; this is the first I have heard about it.

(*Chairman.*) You know that the only person who was aware of the transaction was Mr. Vorstman, for he paid the money.

ALEXANDER AIKEN, called; and Examined.

Mr. A. Aiken

2676. (*Chairman.*) You are acting for the financial adviser?—Yes.

2677. You have investigated the special account headed "special account of Mr. Vorstman" at the National Bank here?—Yes.

(Shown copy of account, which witness identifies.)

2678. Upon one side, the credit side, there is an amount of £2,500—do you know what that is?—Yes, I investigated that transaction, and found that it was deposited on a cheque by Stegman and Esselen on the African Banking Corporation in Pretoria.

2679. There is another credit on April 20th?—Yes. That is a cheque to the Volksstem Newspaper Company.

2680. Then there are two items of £150 each on June 8th and 10th?—These are deposit notes, £15 in gold and £135 in notes.

2681. Going now to the other side of the account, there appears to be £650 drawn on that £2,500?—Yes, that was drawn in specie.

2682. And there is a £1,250 item?—That was drawn to pay for a draft in favour of Max Philipp, London, for £1,252, for which £12 6s. 0d. was allowed to the bank as discount.

2683. Then there is an item 21st March?—That was drawn in notes, not specie. The next is drawn in notes, £50 on 20th April. On the 18th May £200 was drawn in notes, and on a subsequent occasion, viz., 1st

July £94 12s. 3d. was drawn in notes. An item of 31st July I have been unable to trace.

2684. Then there is £1,732 10s., which Mr. Vorstman admitted was the balance of £20,000 paid?—I verified that.

2685. When was that £20,000 paid over?—He drew it from the bank on 26th August, but the bank book shows that the actual transfer of the money from Amsterdam to Pretoria was not effected until 1st September.

2686. That was the date of the letter from Amsterdam, and then he accepted it?—Yes.

2687. Then that £1,732 10s., in what way is that amount dealt with in the account?—On the 28th August Vorstman drew £300 in notes; on the 2nd September he drew a cheque for £500 in favour of P. J. Potgieter, and deposited it to his credit in the Standard Bank here. On 4th September he drew £25, which I cannot trace. The bank books do not show how it was drawn. On the same day he also drew £1,000, which he paid out in notes. On the 6th September he drew £27 19s., and that was credited to Mr. Vorstman's own private account. On 11th September £300 was drawn and paid out in notes. On the 13th September £500 was drawn, also in notes, and on the 20th £41 16s. was drawn in notes and specie. On the 16th October there is a correcting entry of £150, a cheque originally debited to Vorstman's private account, but now transferred to the special account. I cannot trace how paid. On the 14th March Mr. Vorstman drew another cheque for £57 10s., which he paid into his own account. That left a debit balance of £471 17s. 3d., which was wiped out by transfer through the Dynamite Company's own account by cheque.

2688. With the exception of the £1,220, which was a draft in favour of Mr. Max Philipp, and the cheque to Mr. Potgieter of £500, are there any amounts on this side other than those paid out in notes and gold?—Yes, there are these two amounts paid into Mr. Vorstman's private account of £27 19s. and £57 10s. Then there are the two items which I cannot trace.

2689. In addition to that, the difference between £1,732 10s. and £20,000—£18,267—was also paid out in gold and notes to Mr. Vorstman?—Yes, in gold really I think.

(The following report by the witness was handed in to Commission.)

Report on three items of expenditure contained in the books of the "Z. A. Fabrieken voor Ontplofbare Stoffen" (S. A. Explosives Company).

I. On the 31st December, 1897, the following entry appears in the Company's Journal, 1A, 3, 1897, page 17.

"Expert advice. Special services and charges account.
"To Dynamiet Act. Ges., Hamburg.

"Amount disbursed by Max A. Philipp, Chairman, and Dr. G. Aufschlager, in the interests of the company, and ordered to be debited to former account as per Minute 453 of the European Council of November.

"£9,100 a 20.40 M 185,640. Value to-day—£9,100."

It has to be noted of this and other entries in the company's books that they have been passed upon instructions issued from the Hamburg office, and that accordingly, the date of an entry is not necessarily the date of the relative transaction. In the present instance the entry is avowedly in re-credit of a sum or sums which had been disbursed by the Dynamiet Actien Gesellschaft at some undisclosed date or dates prior to or even subsequent to that under which the entry appears.

Upon the 4th November, 1897, a debate in the Volksraad on the Dynamite Company's Concession, which arose out of the report by the Industrial Commission, closed with the adoption of a resolution seriously threatening to the company's interests.

On the 8th November, 1897, Mr. L. G. Vorstman, the principal local director of the company, drew a bill of exchange at 3 days after sight on Mr. M. A. Philipp, Hamburg, the chairman, for £5,500, and negotiated the bill through the Netherlands Bank, Pretoria. The bank teller's cash book for that day contains the credit for purchase of the document, but fails to show how the proceeds were accounted for. From the fact that an I.O.U. for £5,490 2s. 6d., being the exact proceeds of the draft, was held by the bank as cash from the 5th November until the 8th, when it disappears; I have no doubt that the draft was accounted for by the bank on the 5th November, three days before it was really drawn. According to the cash book of that date, the teller then paid away £600 in notes and £4,700 in gold, for which there is no voucher—manifestly these items formed part of the good-for.

II. The second entry to be dealt with appears on page 277 of the Company's Journal, 1A, 4, 1898, under date 31st December, 1898, and reads as follows:—

"Special charges account - - £10,000.
"To Sundries.

"For amounts disbursed by Mr. Max A. Philipp, chairman of the company, and Dr. G. Aufschlager, in the interests of the company, and ordered to be debited to former account, as per Minute 453 of the European Council's Meeting at 16th November, 1897."

Of this sum, £245 2s. is credited to Max A. Philipp, Hamburg, "As per his letter of 19th January a.c.," and the balance, £9,754 18s. to the Dynamiet Actien Gesellschaft, Hamburg, "as per their letter of 7th and (blank) March, '99."

All through the year 1898 negotiations proceeded between the Government of the South African Republic and the Dynamite Company, the former bringing pressure to bear for a reduction in the price of explosives, and the latter endeavouring to resist reductions and to secure some counter advantage in exchange for the reductions which it appears they could not altogether resist. In the Month of April the Chamber of Mines presented a memorial to the Government praying for the cancellation of the company's monopoly. In August the company learned that two out of three legal counsel who had been appointed by the Government to investigate the position of the company's concession had reported adversely to its validity.

In December discussions took place in the Raad, ending inconclusively, and the matter was postponed until the next session. Altogether the year was one of considerable strain and care to the management of the Dynamite Company.

Now, on 24th May, 1898, Mr. Vorstman negotiated through the Netherlands Bank a draft on M. A. Philipp, Hamburg, for £1,000, which was paid out to him in notes.

On the 9th September, 1898, he drew a similar draft for £1,003 5s., the proceeds of which—viz., £1,000—were credited to his private account with the Netherlands Bank. The same day Mr. Vorstman drew out the whole sum—£800 in notes and £200 in gold. This draft transaction appears in a set of private books kept by Mr. Vorstman in the following guise:—A credit to himself p. £1,000 "draft M.A.P.," and a debit to himself p. £1,000, marked "purchase right 4,000sh. Ermelo." This form of entry conceals the real nature of the transaction.

On the 5th October, 1898, Mr. Vorstman again negotiated a draft on M. A. Philipp, Hamburg, for £1,075 3s. 6d., of which £5 3s. 6d. represents bank charges. Of the proceeds £1,020 was credited to his private banking account, on which there appears a cheque the following day of £1,000 in favour of Dr. Engelberg. The remaining £50 was passed by the Bank to the credit of their "Sundry debtors' account" to wipe out a debit of the 4th October, 1898, for £50, transferred to E. Mendelssohn, Johannesberg, who is the principal proprietor of the "Standard and Diggers' News."

The £1,020 and £1,000 items alluded to in the last paragraph appear in Mr. Vorstman's private books, but instead of the former going to the credit of M. A. Philipp or some other person on whose account the draft was drawn, it is simply credited to "L. G. Vorstman, private account," and the debit figures in the same way, while it seems to be described as an "advance." These entries, if they are to be intelligible at all, and Mr. Vorstman shows a clear apprehension of the principles of book-keeping, mean that the money was *not* Mr. Vorstman's, but that he acted as an agent in the matter, and that he was averse to disclosing the full facts even in his private books. When he lends money he is careful to charge it to the debtor, and when he makes an investment he gives a clear record of it in his books.

On the 23rd November, 1898, he again drew on Philipp for £401 17s. 6d., the proceeds of which—£400—were paid out in gold.

On the 1st December, 1898, he similarly drew for £351 14s., but the bank's cash book does not explain how

Mr. A. Aiken.
23 Oct. 1900.

the amount was paid. It does not appear to have been credited to any account, so it was in all probability taken in cash.

On the 7th December he drew £603 1s., of which £3 1s. represents the bank's charges, and the proceeds were paid as to £500 in notes and as to £100 in gold.

III. Under date the 30th November, 1899, there appears in the company's journal, 1 A, 5, 1899, pages 203 and 204, the following entry:—

"Max A. Philipp, Hamburg, to Dynamiet Actien Gesellschaft, Hamburg II.

Transfer from latter account to former this amount in pursuance of D. A. G. letter, dated 16th October, of Minute 589 of European Council's meeting, dd. 12th October, at the chairman's disposal: £20,000."

1899 was another year of strenuous resistance by the Dynamite Company against attacks on its monopoly. In February the Chamber of Mines proposed to the Government to extinguish the monopoly by purchase, and offered to lend the necessary capital at 5 per cent. About the same time the English Government made represenataions taking exception to the company's concession.

In March the Raad rejected certain proposals made by the company to the Executive, and in April Mr. Vorstman expressed the opinion in a letter to the Hamburg office that they were then in the severest crisis in the history of the company. Lengthy negotiations took place between the company and the Executive, and on the 15th August a committee of five members reported to the Raad recommending that the Government should enter into a fresh agreement with the company on the basis of a certain reduction in the prices of explosives and of a fixed sum per case in lieu of a percentage on the profits.

On the 25th August the Raad authorised the Government to complete a contract on these terms.

During this same year, 1899, Mr. L. G. Vorstman kept a second private account at the Netherlands Bank, called "L. G. Vorstman, Special Account," of which a copy is appended. None of the items in this account is to be found in Mr. Vorstman's private books. The following notes on the respective items contain all the additional information I have succeeded in obtaining regarding the transactions:—

No. 1 Item.—This was a deposit of a cheque by Stegmann and Esselen on the African Banking Corporation, Pretoria, p. £2,500. The cheque was drawn on that firm's trust account in favour of Vorstman, and on the same day they paid in £2,505 to the credit of their trust account, of which £2,500 consisted in a cheque by Baerveld and Heybloom on the Netherlands Bank, Johannesberg. This seems to be the corresponding entry in Stegmann and Esselen's account.

No. 2 Item.—Drawn in specie.

No. 3 Item.—Remitted to M. A. Philipp by draft on London, p. —1,232 6s. The bank allowed £12 6s. discount on the transaction.

No. 4 Item.—Drawn in notes and specie.

No. 5 Item.— Do. notes.

No. 6 Item.— Do. notes.

No. 7 Item.—Deposit of a cheque by "Volksstem" newspaper, p. £200.

No. 8 Item.—Drawn in notes.

No. 9 Item.— Do. do.

No. 10 Item.—Deposit of notes

No. 11 Item.— Do. do.

No. 12 Item.—Drawn in notes.

No. 13 Item.—Not shown how cashed. Probably notes and specie.

No. 14 Item.—Deposit of £15 in gold and £135 in notes.

No. 15 Item.—Drawn in specie.

No. 16 Item.—Entry purporting to be a transfer from the Amsterdam office of the Netherlands Bank to Pretoria in favour of Vorstman p. £20,000. But while the entry of the transfer appears in the books of the Pretoria branch under the date 26th August, 1899, the advice from Amsterdam actually transferring the money is dated 1st September, 1899, and an account accompanying that letter of advice shows that the money was paid over or accounted for to the Amsterdam Bank by the Nord Deutsche Bank of Hamburg on the 30th August. The difference between the £20,000 transferred and the £1,732 10s. deposited by Vorstman—viz., £18,267 10s.—would appear from the bank's books to have been paid out in gold. But on the same day a sum of £3,500 was remitted by the bank to Vryheid by draft in favour of H. P. Breytenbach, the exchange on which was £17 10s. The bank's books state that Breytenbach personally remitted the money, which was also apparently paid for in gold, unless it was deducted from the amount due to Vorstman under the transfer.

No. 17 Item.—Drawn in notes.

No. 18 Item.—Cheque in favour of P. J. Potgieter, who deposited it to his credit at the Standard Bank, Pretoria. His account shows a cheque drawn on 7th September, 1899, in favour of J. Du Plessis de Beer, p. £300, paid same day in cash.

No. 19 Item.—Nothing to show what this was.

No. 20 Item.—Drawn in notes.

No. 21 Item.—Cheque, which was deposited to the credit of Vorstman's private account.

No. 22 Item.—Drawn in notes.

No. 23 Item.— Do. do.

No. 24 Item.— Do. do. and specie.

No. 25 Item.—Nothing to show what this was.

No. 26 Item.—Cheque paid in by Vortsman to his private account.

No. 27 Item.—This deposit consisted of a cheque drawn by the Dynamite Company, and it closed the account. In the company's books the payment is charged to Ledger A accounts, which is practically another expression for Hamburg office, as the detail entries for Ledger A accounts are supplied from Hamburg.

IV. The transactions which have been detailed in this report have all been effected by Mr. Vorstman, but from the fact that they either do not appear in his books or appear in such shape as stamps itself as a disguise, I conclude that they are not personal matters of Mr. Vorstman. He is the chief representative of the Dynamite Company in the Transvaal, and it is at least a feasible assumption that the large sums disbursed by him were supplied by and were spent for that company. This assumption becomes still more credible when the entries in the company's journal which have been quoted are considered. These agree in point of time with Mr. Vorstman's transactions, and their real nature is purposely concealed. The charge which they constitute upon the profits of the company was of a nature that the company could not maintain as legitimate in settling with the Government for its 20 per cent. share in the net profits.

In the book entries passed by the company for the Government's share of profits the items of £9,100 and £10,000 are added to the actual surplus earnings of the company for the calculation of the percentage. The profits for 1899 are not yet ascertained so far as the books kept in Pretoria are concerned, but there is evidence to show that the £20,000 item has likewise to be disallowed as a charge on the profits in settling with the Government.

Extreme care has been exercised in the manner of disbursing the moneys to prevent the disclosure of their actual destination and of the nature of the expenditure. The Dynamite Company does not directly apear in the transactions at all. It merely reimburses the agents. The cash is furnished in the first instance by the Dynamiet Actien Gesellschaft, the parent concern of the Z.A. Fabrieken, or by Mr. M. A. Philipp, the chairman of the board of the latter. Then Mr. Vorstman, who seems to have managed the expenditure in the Transvaal, or a portion of it, takes every precaution to conceal his actions. Instead of passing the proceeds of his drafts on Philipp through a bank account, which is the usual practice, he obtains payment of them in cash, notwithstanding that the amounts run into considerable figures, and thereby all further trace is generally lost.

ALEX. AIKEN.

18th October, 1900.

EDERLANDSCHE BANK EN CREDIET VEREENIGING VOOR ZUID AFRIKA.

Mr. L. G. Vorstman, Pretoria, 8th October, 1900.

Spec. A/C.

	1899.			£ s. d.	£ s. d.
No. 1.	Feb. 2	By cash	–	– –	2,000 – –
„ 2.	Mar. 20	To cheque	61	650 – –	
„ 3.	„ 20	„ „	62	1,220 – –	
„ 4.	„ 21	„ „	63	210 – –	
„ 5.	„ 23	„ „	59	110 – –	
„ 6.	April 20	„ „	71	50 – –	
„ 7.	„	By cash	–	– –	200 – –
„ 8.	„ 15	To cheque	47	10 – –	
„ 9.	May 18	„ „	39	200 – –	
„ 10.	June 8	By cash	–	– –	200 – –
„ 11.	„ 10	„ „	–	– –	200 – –
„ 12.	July 1	To cheque	74	5 – –	
„ 13.	„ 31	„ „	23,956	94 12 8	
„ 14.	Aug. 4	By cash	–	– –	150 – –
„ 15.	„ 26	To cheque	37	2 10 –	
„ 16.	—	By cash	–	– –	1,732 10 –
		Carried forward			

	1899.			£ s. d.	£ s. d.
		Brought forward			
„ 17.	Aug. 28	To cheque	98	300 – –	
„ 18.	Sept. 2	„ „	95	500 – –	
„ 19.	„ 4	„ „	96	25 – –	
„ 20.	„ 4	„ „	94	1,000 – –	
„ 21.	„ 6	„ „	93	27 19 –	
„ 22.	„ 11	„ „	92	300 – –	
„ 23.	„ 13	„ „	91	500 – –	
„ 24.	„ 20	– – –	90	41 16 –	
„ 25.	Oct. 16	Cheque 25582 wrongly entered ordinary account, 14th October, 1899.	–	150 – –	
	Dec. 30	By balance	–	– –	414 7 3
				5,396 17 3	5,396 17 3
	1900.				
„	Jan. 1	„ „ folio 858	–	414 7 3	
„ 26.	Mar. 14	„ Cheque 16200	–	57 10 –	
„ 27.	—	„ Cash	–	– –	471 17 3
				471 17 3	471 17 3

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2690. (*Mr. Van Hulsteyn.*) I believe you have also gone through Mr. Vorstman's private books in which his private transactions are entered?—Yes; none of the items dealt with in the special account appear?

Mr. GEORGE BERTRAM, called; and Examined.

Mr. G. Bertram.

2691. You are manager of the National Bank at Vryheid?—Yes.

2692. Do you know Mr. Breytenbach?—Yes.

2693. Was he a customer of your bank?—Yes.

2694. Do you recollect seeing him in August, 1899?—I saw him about the beginning of September.

2695. Did he come to your bank on a matter of business?—Yes, he came to make a deposit.

2696. What did he deposit?—He deposited a draft on the Netherlands Bank for £3,500 to his credit.

2697. He enquired about a further sum to be transferred to him?—Yes, a further sum of £1,990 was transferred by wire on 26 August, which made £5,490 to his credit.

2698. From whom did that advice come?—The £1,990 came from our branch in Pretoria by wire.

2699. He did not tell you who it was placed this money to his credit at this end?—No. It was simply wired from Pretoria, Breytenbach, Vryheid.

2700. You are acquainted, as most bankers are, with the financial position of your customers?—Yes.

2701. And you knew Mr. Breytenbach's position?—Yes.

2702. Was that a large amount for him to have at his disposal—£5,490?—It was an extraordinary amount. Before then he was a man who had no means at all, or very little.

2703. Did he draw out either of these sums of money?—He drew them out just before I left. I closed the branch on account of the war in May, 1900.

2704. Did that £5,490 remain to his credit at the beginning of September?—Part of it. He drew small sums, but the balance he did not draw out until May, 1900.

2705. Did he say anything to you upon these occasions with reference to this money?—We had a sort of general conversation, in which he mentioned that these amounts were merely crumbs he had picked up for his services and the influence he had used on the Dynamite Bill. I did not take very much notice; I had heard all about it all over the town. It was general talk. I did not press him on any point.

2706. You are certain that he said that?—Oh, yes. He used the word "crumbs." It struck me that the man who used these words for so many thousands was a man who was not accustomed to deal with large amounts.

2707. (*Mr. Rooth.*) (*To Witness.*) With the exception of certain small amounts drawn prior to May, 1900, that amount of £4,590 remained to the credit of Breytenbach until May, 1900?—Yes; he paid off some liabilities, and told me these were moneys due to him for his services.

2708. (*Mr. Loveday.*) Had he just returned from Pretoria when he came to see you?—Yes.

2709. He had been in Pretoria for some time?—Yes.

2710. He was here during the dynamite debate in August?—Yes.

2711. He was a great friend of the President's, and used to stay at the Presidency?—Yes; he gave me the President's house as his address in Pretoria.

Mr. BAERVELDT, called; and Examined.

Mr. Baerveldt.

2712. Your firm are stockbrokers?—We are bankers, carrying on business in Pretoria and Johannesburg.

2713. Do you remember in February of last year receiving certain instructions for a sale of shares by Mr. Vorstman?—No; it was not a sale of shares. We are interested in the Ermelo Railway Company.

2714. In what way?—As having shares in the company. We are large holders. At the time the company was floated we wanted to get hold of as many shares in connection with the concession as possible, and we instructed Stegmann and Esselen to, if possible, buy from Mr. Tosen 4,000 shares which we knew he possessed. There were attached to the concession certain conditions. The original holder of the concession, Maherry, had to get from Mr. Henderson at the time £10,000 in cash and 15,000 shares on his floating the company.

2715. That was for the sale of his concession?—Yes; we knew Mr. Tosen had an interest in these 15,000. He acknowledged that once in court. Tosen is a member of the Raad. We therefore instructed Stegmann and Esselen to try and buy these shares for us.

2716. They acted as your agents?—Yes.

2717. What was the result?—We found that the shares were held by Mr. Vorstman.

2718. Then, before you gave these instructions, it would seem that Vorstman had purchased Tosen's shares?—We did not know that; but it was found out afterwards, when Tosen was approached.

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2719. What were these shares worth in the market?—We thought they would be worth about 18s., nearly par. At present they are low, on account of the war. Then we wanted to know what Vorstman's price was for the shares. At that time Vorstman did not know that the company was successfully floated, but we knew that was the case, and we wanted to buy the shares. We knew it from our Amsterdam people.

2720. How many shares did you get?—4,000, at 12s. 6d.; Vorstman wanted 15s., but we offered, and he accepted 12s. 6d.

2721. Who executed the transfer of the shares?—No transfer was necessary, because there was a piece of paper setting forth that Tosen held these shares, which he had got from Maherry. It was a kind of document saying that Maherry had transferred 4,000 of his 15,000 shares to Tosen.

2722. But not saying for what consideration?—Afterwards he said that he was interested in the concession. For that reason he never voted for the concession in the Volksraad.

2723. Then you got this document?—I think I have it in my office in Johannesberg.

2724. (*Mr. Ashmore.*) This was a right to have 4,000 allotted. Have you got this allotment?—Yes; I have got the shares.

2725. (*Mr. Van Hulsteyn.*) (*To Witness.*) Were there any allotment certificates issued? I suppose you knew where all these shares were held? What became of these 15,000 shares of Maherry's? Did he give away any other allotment certificates?—As far as I know, Stegmann and Esselen have the rest.

2726. Do you know what they did with them?—They sold nearly all of them to us; we got as many as possible.

2727. Did you get the whole 15,000 shares?—Yes, as far as I remember.

2728. Can you remember how you got your certificates back—were they scrip certificates or allotment certificates?—They were simply this piece of paper.

2729. In whose favour were these other pieces of paper, representing the 11,000 shares?—As far as I remember, there was one to Tosen. I cannot say at present with regard to the others.

2730. Did any members of the Raad get one?—That I am not sure of; there might be information in the office of Stegmann and Esselen.

2731. Tosen got 4,000, and the remaining 11,000 were left by Maherry with Stegmann and Esselen. I would like to know in whose favour they were?—As far as I remember, the rest were in the name of Stegmann and Esselen.

2732. Surely they must have been acting for principals?—No; for their own account.

The Witness VORSTMAN, recalled; and Examined.

Mr. L. G. Vorstman.

2733. With regard to this £2,500, which comes into your special account, and which was drawn on in the way we know, why did not that go to your private account?—For this reason, that I did not feel entitled to take that profit.

2734. Why not?—Because it was not bought with my money.

2735. Whose money was it?—I took some money belonging to the Secret Service Fund.

(*Mr. Rooth.*) May I suggest that the Commission should ask Mr. Vorstman what profit he made, if any, on that transaction with Tosen's shares?

(*Mr. Van Hulsteyn.*) As a matter of fact, Vorstman made about £1,500 profit.

(*Witness.*) I cannot state that £1,500 was made by that transaction.

2736. (*Mr. Loveday.*) Did the company make the profit?—(*No answer.*)

2737. (*Chairman.*) I do not understand it. Did you have any instructions to speculate in Ermelo shares?—I remember Mr. Tosen coming once to me, and saying he had an allotment certificate for 4,000 shares, and asking me whether I would buy. In the first instance, I paid it out of my own account. Later on I drew, I believe, on Mr. Philipp.

2738. Did Tosen tell you he wanted money?—Yes, he did.

2739. And it was in order to accommodate him that you bought this allotment letter?—Yes.

2740. He asked you to do so?—Yes; but as I thought I should get the money back, I had no objection to entering into the transaction.

2741. You thought the shares were worth the money?—Oh, yes; and they proved to be.

2742. But you in the first instance accommodated Mr. Tosen by buying these shares with your own money, and then, considering you were acting in that transaction as much in the interests of your company as of your own, you turned over the amount to them. But the company had not been floated?—No; but I had information that the company was going to be floated. I am nearly sure Stegmann and Esselen acted for themselves, and they made a lot of money on this Ermelo share transaction.

PIETER JOHANNES POTGIETER, called; and Examined.

Mr. P. J. Potgieter.

2743. (*Chairman.*) You were Burgomaster of Pretoria?—Yes.

2744. Do you remember receiving a cheque for £500 from Mr. Vorstman on the 2nd September, 1899?—I received a cheque.

2745. Did you receive notes or cash for that amount?—No.

2746. Was it paid to your credit at the bank?—No.

2747. Have you your bank book here?—Yes.

(*Standard Bank book produced.*)

2748. You have no doubt that by some means or other you received £500 on the 2nd September?—I, perhaps, deposited £500 on the 2nd September.

2749. If you did so, was it at your bank? From whom did you receive that £500?—As far as my recollection goes, I think it was a cheque that I cashed for somebody.

2750. Whom?—That I cannot say.

2751. Do you mean to say that you received a cheque?—I may have cashed a cheque.

2752. You admit you cashed a cheque for £500 on 2nd September last year, and you say you do not know from whom it was?—Yes; I say it often slips one's memory.

2753. Have you any doubt that it was received from Mr. Vorstman?—Yes; I doubt it.

2754. If it were not Vorstman, who was it?—I say I have often cashed cheques for people. I would like to see this cheque.

(*Shown cheque.*)

(*Witness.*) Yes; it was a cheque of Vorstman's, but it was not a cheque to me.

2755. To whom was it, then?—I cannot recollect.

2756. (*Mr. Ashmore.*) Do you mean that Vorstman was not the giver of the cheque?—He was not the giver of the cheque.

2757. Who signed the cheque?—That I do not know.

2758. Do you deny depositing a cheque for £500, signed by Vorstman?—I cannot say.

2759. You cannot recollect who gave it to you?—No; I cannot.

2760. It is a cheque of Mr. Vorstman; how did you get it?—Someone, a Mr. So-and-so, had a cheque, and it was in the afternoon, and he says, "Can you cash me that cheque?" and I cashed it.

2761. (*Chairman.*) Your memory was sufficient a moment ago to enable you to say that you did not receive it from anybody. Who was it handed the cheque to you?—I said so far as I recollect, it was not handed to me personally by Mr. Vorstman, it was not given to me.

2762. Does that mean "handed to you"?—I would rather talk in Dutch, and perhaps you would understand better.

2763. This is a cheque for £500, signed Vorstman. How did it come into your possession?—I say I cashed it.

2764. We know that very well. Who gave it to you?—I cannot recollect the man for whom I cashed the cheque.

2765. It was a man who gave it to you?—Certainly. I did not pick it up.

2766. And you did not have the curiosity to enquire?—I may not know his name at the moment he is a stranger to me.

2767. This stranger handed a cheque to you?—I may find the man.

2768. But he was a stranger to you?—It may be that he was not such a particular friend. There are hundreds of people here, and there are several people for whom I have cashed cheques.

2769. Is it the habit of the Burgomaster of Pretoria to cash cheques for individuals whom he does not know?—No, a man comes to me and he says "can you cash a cheque?"

2770. You cash cheques for anybody who comes along and asks?—As long as I know something about him or about the cheque.

2771. How can you know?—I know Vorstman's name.

2772. You depend upon the good faith of the man who hands you the cheque. Did you enquire about this man?—I generally do when I get a cheque.

2773. So that you can brush up your memory about this?—I can try and find out.

(*Chairman.*) You know we have means of finding out and of dealing with anybody who won't produce information.

(*Mr. Van Hulsteyn.*) I think this man ought to be dealt with.

2774. (*Chairman.*) A day or two ago you made a statement saying that you had received this cheque from Vorstman?—I never did. I am quite clear on that.

2775. Did you make a payment on the 4th September?—I can see that in my book. (*Consults bank book.*) No, not on the 4th.

Mr. P. J. Potgieter.

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2776. Not of £200?—No, what Mr. Van Hulsteyn means is a payment of £300 on the 7th. Here it is.

2777. And that payment of £300 was in favour of Mr. Jan du Plessis de Beer?—Yes.

2778. Is he in business?—Oh, yes.

2779. What business is he in?—He buys and sells things. Sometimes oxen and cattle, also ostriches. I have bought from him.

2780. When was the last transaction of that kind you had with him?—Six or seven months ago—ostriches.

2781. How many ostriches did you buy?—I bought nine or ten.

2782. Did you have any transactions before this year with him?—Yes, I always have transactions—perhaps I buy grain from him.

2783. Is he a farmer?—Yes.

2784. What is this £300 paid to him for?—It was money he had with him, and I put it in safety for him.

2785. When?—I think he gave it to me in August.

2786. Is there any record of that?—Yes. On the 15th August there is a deposit of £300. I think that is it. He was staying at a boarding house. He keeps no account at the bank, and he gave me his money to put in safety.

2787. You say you put £300 in safety on 15th August. Is that recorded?—No, so far as I can make out, I would give a receipt when I put it in safety.

2788. Is there any memorandum of this anywhere?—How do you mean?

2789. Did Mr. De Beer take a receipt?—Is there not a record of having deposited £300 on August 15th.

2790. (*Chairman.*) I only see £100. Do you say that was a repayment of this £300 that he gave you to put in safety?—I suppose so.

2791. Will you swear that?—As far as I can recollect.

2792. We want a little more than that?—Yes, I swear he gave me some money to put in safety.

2793. Will you swear that sum was £300?—As far as I can recollect, I am quite certain it was £300. When he wanted to go home he asked me for the money and I gave him a cheque.

2794. You say you do not recollect what the amount was?—Yes, I recollect. I am positive it was £300.

2795. It is a coincidence that you receive £500 from Vorstman on 2nd September and pay out £300 on the 7th?—I have received other money. Here is a sum, for instance, of £1,100. I receive money and pay it away in my business. It is nothing out of the way. I have often done it.

W. Van Hulsteyn, called; and Examined.

2796. (*Chairman.*) In the course of your investigations did you see Mr. Potgieter with reference to a cheque of £500?—I did.

2797. What did he say?—When he came to me I charged him with having received £500 from Vortsman, which he admitted then and there. In order to be perfectly correct, I called on Mr. Wilson, the shorthand writer, and asked him to take down Mr. Potgieter's statement.

2798. Did you make any note yourself independently of Mr. Wilson?—No. Mr. Wilson took it down, and read it over to Mr. Potgieter.

2799. Is this transcription what was handed to Mr. Potgieter?—It is.

Mr. W. Van Hulsteyn.

2800. (*Mr. Loveday.*) And that is correct?—Yes, the statement is as follows:—Mr. P. J. Potgieter says: "During September last year, I received a cheque for £500 from L. G. Vorstman, of the Dynamite Company I do not remember what he gave me this money for. If I gave a cheque to Mr. John du Plessis de Beer, I would have asked him what it was for so as to refresh my memory. I do not remember what I gave him £300 for. Mr. de Beer and myself have had several transactions."

R. F. Wilson, shorthand writer, sworn, corroborated Mr. Van Hulsteyn's statement, and testified to the accuracy of the foregoing statement, and also as to Mr Potgieter's admitting its correctness.

P. J. Potgieter, re-called; and further Examined.

2801. (*Chairman.*) You have heard what these two witnesses have said. That statement is now sworn to by these two gentlemen as having been made by you?—The advocate here told me; he says: "Look here, we have gone through your banking account, and you have received a cheque from Vorstman," well I said "I do not deny it, I know nothing about it. Perhaps if I think about it I will remember. Mr. Van Hulsteyn says "Tell me later on, but we have gone through your books and it is so." I says, "It may be." I told him that distinctly. Then he wrote down, but I remember nothing about it. He says, "What you say there I will tell the Governor, and we may want you for the Commission."

Mr. P. J. Potgieter.

2802. (*Mr. Van Hulsteyn.*) You remember a shorthand note being taken of what you said by Mr. Wilson?—Oh, no; not that I have received a cheque. I am sorry you did not give it to me to sign. Then I would stand by it.

Mr. JAMES MILNE, sub-manager of the Standard Bank, recalled; and Examined.

Mr. J. Milne.

23 Oct. 1900.

2803. (*Chairman.*) You have some information to give us with regard to this cheque?—Mr. Potgieter placed a cheque for £500 to his credit on 2nd September. (*Shown pass book and identified entry for £500.*)

2804. Thereafter he drew out £300 as by a cheque we have here in favour of J. du Plessis de Beer?—That is so.

2805. (*Mr. Van Hulsteyn.*) (*To Witness.*) That cheque which he put into the bank was a cheque drawn on the Netherlands Bank by Mr. Vorstman?—To the best of my belief that is so.

SAMUEL MARKS, recalled; and Examined.

Mr. S. Marks.

2806. (*Chairman.*) What is the history of the Royalty which you received from Mr. Lippert?—I cannot give you the dates, but as soon as possible I will try to remember them. I think it must have been about 1885 or 1886, Mr. Edward Lippert came up to Barberton, and he brought with him a secretary. We were talking about certain business, and he said, "Is there anything else to be done in this country?" I said "I cannot tell you." We spoke about mining. Then I took him out to examine some mines which we have, and the question came up about dynamite and blasting. We were spending £7 10s. or £8 a case, and he said "There is good business here." I said, "Yes, very likely." Then, as we have got some coal mines in the country at Vereeniging, he asked me certain questions and said, "Do you think there is a chance of getting something from the Government regarding a dynamite factory. I said, "I cannot tell you. If you go in I want to have a certain share because we are using a great deal of it." Then he stopped away a couple of days, and when he came back he said "What is your share to be." I said, "I think it will be about a quarter if the whole thing is £200,000." So we left it off at that. A few days later we went into figures, and he told me he had got his friends who would not mind going in for this dynamite business, did I still wish to have a quarter? I said "yes." He remained in Barberton about a fortnight or three weeks, then I came down to Pretoria, and one day he told me he had written to his friends in Europe, who were prepared to take up the business. I said "Well, I want you to understand that I must have a quarter in the business."

2807. That seems rather premature. I suppose you knew it was worth while giving you a quarter?—I do not know that. The reason I said it was that we were using a great deal of dynamite. I was the first man to use dynamite at Kimberley from Nobel's. They promised to sell it for a certain price, but they raised the price from £4 10s. to £6 10s., and I put my foot down so that I must have a share of the business.

2808. I do not see why you should have convinced Mr. Lippert of the propriety of selling you a quarter share. Probably he thought you had valuable influence?—We will go on step by step. Then I came down first, and then Mr. Lippert followed up. I am living on the roadside, and the post-cart passes my place. We had a little talk, and he asked me if I could give him any assistance. I said I could not tell him that, and asked what assistance he wanted. He said, "If I want to fix this up, it will cost us many hundreds of thousands of pounds." I told him, "I cannot give you much, but I know a friend of mine who will assist, and I will assist also.

2809. Who was your friend?—Mr. Nellmapius. He is dead now. He was connected with me in business, and I asked him to assist. Well, there were certain transactions between the Government and Mr. Lippert, who was introduced to the Government. Then Mr. Lippert went to Europe, and I received a letter from him, but I waited till he came back. When he came back he said, "My friends do not wish to have any partners in the business; they want to do the whole business themselves." I said, "If that is the case, I shall oppose you through thick and thin." He then asked me what I wanted, and I replied, "We are using a lot of dynamite, and I will undersell you." Then he said, "If my people put their money in, you shall have a royalty of so much per case." I forgot to mention that when Lippert came down to Barberton Mr. Beit, of Wernher, Beit & Co., was also here, and Lippert came to me one morning and said, "You will have to take a smaller share." I asked, "How is that?" and he replied that Beit wanted a half, because if he could only get a quarter it would not be enough for his group. I said, "That has nothing to do with me; I want a quarter." In the meantime I was walking across the market square, and Beit says, "Am I going to have a half or not?" Lippert said, "Marks wants a quarter, you want a half, and if I give you a half my people will have nothing; where do I come in?" I do not know how this was finished, but still I stuck to my quarter. As I said when he came back from Europe, and he told me his people did not want any partners, as they would find all the money themselves, and he asked if I would be satisfied to get a certain royalty. I wanted him to show me some figures, and he showed me. I told him that if he and his people were going to make a big profit I was entitled to 6s. a case. I believe he paid us 4s. in the beginning, then it came down to 2s., then down to 1s. with a certain shifting price.

2810. At the time when Lippert transferred his concession to the French company, did the French company take you on as part of the concern?—Oh, yes; I always looked after that.

2811. And the Explosives Company?—Yes, also, I followed that up.

2812. Then you have had this royalty which has amounted to about £10,000 a year?—Oh, yes; sometimes more.

2813. You got that because in 1886 you told Mr. Lippert that you were a large consumer of dynamite, and that you wished to have a quarter share in the factory—a quarter share which you have never paid anything for?—I do not think I have paid anything.

2814. And you have had £10,000 a year?—Yes, because I was here in the field. I was prepared to put in £50,000. It was through my own foresight that I got all that money.

2815. (*Mr. Ashmore.*) You had great influence with the Transvaal Government?—No; they have not treated me very well at all.

2816. Do you think you could have prevented Lippert getting it?—I do not think so, but I would have tried my best.

Mr. JORISSEN, called; and Examined.

Mr. Jorissen.

2817. (*Mr. Van Hulsteyn.*) You are manager of the Netherlands Bank?—I am.

2818. There were 22,500 shares which were issued in the name of Dr. Gobert, now standing in the name of the Netherlands Bank?—I have seen that from the trust book.

2819. These shares were originally numbered 182,507-205,000—that is according to the share register. Are they the property of the Netherlands Bank?—I cannot give you any information. Any transaction in shares would have been done in Europe, in Amsterdam. The bank became connected with the company in this fashion. We issued a portion of the French company's capital in Amsterdam; through that four members were put on the Paris board of the old company, and the Amsterdam office issued bank certificates as against these shares, and kept these shares in its own safe so as to nominate the directors. That is the only thing I know about the bank's connection with the shares. I never corresponded on this matter. This is the first I know about it, that these shares were in Dr. Gobert's name. I do not know if they are now registered in the bank's name.

2820. They were held by the bank in trust?—I suppose so, if they are still in the bank's name.

2821. You cannot tell us what trust that is?—No, I do not know.

2822. Are the certificates out here?—I have never seen them; they have never been in my possession.

(*Mr. Rooth.*) I am instructed that the shares are bearer shares.

Mr. John Dougall and *Mr. Robert Baikie*, accountants, submitted their report (with annexures) on the Dynamite Company, including memoranda, showing:—

1. Explosives and material shipped from Europe for the Government account.

2. Explosives f.o.b. at European ports.

3. Explosives made up or manufactured and sold by the company during the period ending 31st December, 1895, 1896, 1897, and 1898.

4. A statement showing the profits which the company has been making on its manufactured and imported explosives.

5. A Table showing the company's production.

6. A statement of sales.

7. A memorandum showing the stocks at the end of each half-year.

8. Statements of the cost of sulphuric acid, nitric acid, and nitro-glycerine.

Also three summaries, viz., a statement of the manufacturing and trading account; a statement showing the gross profits, the cost of manufacturing and the net profit; and a statement of the royalties, commissions and general expenses; a statement of the ammunition account, and a factory statement.

(*Mr. Van Hulsteyn.*) (*To Mr. Dougall.*) Two items appear in these accounts against the late Government, one with respect to 10,000 split bullets and one with respect to 10,000 soft-nosed bullets. I think there should be some explanation of these items, as they are not supposed to be used in civilised warfare.

(*Witness.*) These appear to have been imported from Nobel's company in Glasgow.

Mr. Jorissen. 23 Oct. 1900.

(*Mr. Rooth.*) With reference to the remark just made as to the importation of 20,000 split and soft-nosed bullets—these were sold for sporting purposes to the Government. They were imported in September, 1899.

(*Mr. Van Hulsteyn.*) But the sale to the Government was on 4th May, 1900, in the middle of the war. They were not hunting then—not in that way. There is also a statement with regard to the manufacture of smokeless powder during the war.

(*Chairman.*) What was the method of sale in May? Did the Government commandeer everything on the premises?

(*Mr. Rooth.*) I have no instructions. I would ask the Commission to allow us to go through these documents. (*Permission was granted.*)

(*Mr. Van Hulsteyn.*) There is also an account with the Orange Free State Government, another account with Delfos Brothers, a firm who were making fuses, and a memorandum giving details of receipts from officials of the Transvaal Government for powder, cartridges and ammunition during the war.

An additional statement by *Mr. Alexander Aiken* was also put in.

(*Mr. Rooth.*) I beg to ask for an order to get our books and papers back.

(*Chairman.*) I am quite certain the military authorities in possession of the documents will give absolute access to your clients to the books.

Mr. Rooth suggested that everything should be in one place in order to obviate the necessity of going from one office to another.

(*Mr. Van Hulsteyn.*) Mr. Rooth can have any book he likes with the exception of Mr. Philipp's letter books, which I propose to hand in to this Commission.

FOURTEENTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Wednesday, 24th October, 1900.

MEMBERS OF COMMISSION.

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

COLD STORAGE COMPANY.

(*Mr. Rooth.*) I appear for the company.

(*Chairman.*) I have not yet seen the papers in this matter, therefore will Mr. Rooth explain the nature of the Concession?

(*Mr. Rooth.*) The reason why we have not prepared any papers is because the company has been advised that in accordance with the Proclamation this matter does not come within the purview of the Commission, but we are quite prepared to go on. This contract was granted on 22nd March, 1898, by the Government of the South African Republic to Messrs Schoeman for the establishing of a company for the exploitation of cold storage room. The concessionaires bound themselves to establish a company within two months from the date of the contract. The working capital is £25,000, £10,000 to be paid up on the date of registration. The Government undertakes to advance to the company the sum of £85,000, to be used as working capital, bearing interest at the rate of 4 per cent. per annum. The company undertakes to repay the advance by the Government within 25 years in sums of not less than £1,000 sterling. The Government reserve certain rights with reference to the price of beef and mutton. Major Armstrong can give particulars as to the financial state of the company. 24 Oct. 1900.

(*Chairman.*) It seems to be an advance of the Government of £85,000 to the company with the solitary obligation that the company has to erect certain cold storage premises, and that the sale therein of meat shall be at certain fixed prices. Is there any other right?

Mr. Rooth replied in the negative.

(*Chairman.*) There is nothing to prevent anybody else starting cold storage.

(*Mr. Rooth.*) None whatever, this company is not a monopoly.

(*Mr. Loveday.*) Outside the £85,000 they have no other privileges.

(*Mr. Rooth.*) The company have received from the Government under this contract the sum of £69,823 1s. 9d.

(*Chairman.*) I do not see how this comes within our scope at all, and I do not think we can go into it.

MATCH FACTORY CONTRACT.

24 Oct. 1900.

(*Mr. Roos.*) The contract I represent is a contract which was given under the Volksraad resolution of 1896 to F. Penn and Co. The formal documents have been put in, but the manager is away in Durban. I have no information beyond the fact that the ground was purchased and the factory started. Then the war intervened, and nothing further was done.

CALCIUM-CARBIDE.

(*Mr. Hudson.*) I have been instructed from London to protest against the Concession for the manufacture of calcium-carbide, but the owners of the Concession have not filed any claim.

JOHANNESBURG CITY AND SUBURBAN TRAMWAY CONCESSION (continued).

Mr. Seward Brice, Q.C., for the Concessionaires; Mr. Gilfillan for the Municipality of Johannesburg.

The following statements were put in on behalf of the Johannesburg City and Suburban Tramway Company:—

In the matter of the Johannesburg Tramway Concession, No. 234, granted by the late Government of the South African Republic, dated 16th April, 1889, now held by the Johannesburg City and Suburban Tramway Company, Limited.

Statement submitted on behalf of the said company, pursuant to Notice No. 9 of 1900, dated 8th September, 1900, under protest, and without prejudice to and reserving the rights and privileges of the said company.

The following is a brief statement of the material facts from the date of the Concession having been granted to the present time.

1. The Concession was granted to Sigmund Neumann, of Johannesburg, by the Government of the South African Republic on the 16th April, 1889. On the 27th September of the same year Sigmund Neumann transferred his rights to the Johannesburg City and Suburban Tramway Company, Limited. A sum of £50,000 was at first provided in respect of working capital, and altogether nearly £100,000 in cash has been expended on the undertaking.

2. A sum of £1,000 was deposited as security in terms of the Concession with the late Government, which at the outbreak of hostilities held such security in the shape of Transvaal Government Debentures.

3. The business of the company was to exploit tramways in the town of Johannesburg and its vicinity, and steps were immediately taken to carry out the purpose for which the company had been formed.

The building of the company's depôt, and the construction of the lines, etc., was commenced early in the following year, and the first sections (Main Line Commissioner Street and Bree Street Doornfontein line), covering a distance of 4¾ miles, were completed, and opened for traffic on the 24th February, 1891.

The system has been extended and added to from time to time as the town increased in size and the public traffic demanded it, till the length of line at the end of the year 1898 was 11¾ miles.

4. Various further additions to the system were in contemplation at the time of the cessation of work, the plans in connection with which had been approved of by the Government of the South African Republic.

5. The company's shares are owned principally in the British Isles, Germany, France, Belgium, and Switzerland.

6. Car Service.—The motive power was provided by horses and mules; and a service to meet all public requirements has been run throughout the company's active existence. The services on the different sections varied from four to twelve in the hour (or every five minutes each way), and in addition numerous special cars were run as required. The average mileage run during the years 1897 and 1898 was over 1,200 miles daily.

The average fare paid has been 3d. per mile.

Taking the year 1898 (the last completed year), the receipts per car mile were 2s. 5·6d., and expenses 2s. 2d.

7. The company employed on the average 60 white men, 40 coloured, or Cape boys, and 200 natives.

8. Power.—The Concession provides that the motive power was to be by means of horses or mules, or by such other power as the Government might sanction. From early in its existence the company desired to alter the motive power to electricity in order to meet the wishes of the public and to cope more effectively with the traffic; and in terms of the clause (No. 16) made repeated applications commencing in April, 1891, and renewed in 1895, 1896, 1897, 1898, and 1899 to the late Government to be allowed to do so, but without success. Meanwhile the Government granted an electric tramway concession for Johannesburg to one Lombard, a member of the Volksraad, this company protesting, as it considered such concession an infringement of its rights; and such Concession on being brought before the Volksraad was twice thrown out.

9. During the company's existence dividends have been distributed to shareholders, as follows:—

	In the year	1891	Nil.
	,, ,,	1892	Nil.
1st Dividend	,, ,,	1893	4 per cent.
2nd ,,	,, ,,	1894	4 ,,
3rd ,,	,, ,,	1895	6 ,,
4th ,,	,, ,,	1896	10 ,,
5th ,,	,, ,,	1897	7½ ,,
	,, ,,	1898	Nil.
	,, ,,	1899	Nil.

10. The operations of the Company were entirely suspended on the outbreak of the war. All the horses and the supplies of forage and grain were commandeered by the South African Republic with the exception of 46 horses, which the company had been able to remove to Mooi River, in Natal, at the end of September, 1899, but which were afterwards captured by the Boers at that place.

11. The total number of horses taken was 206, valued at about £5,150; whilst the forage and grain commandeered was of the approximate value of £1,500. Certain miscellaneous stores were also commandeered by the Boers.

12. With the exception of the original Concession agreement all the company's books and documents are in Johannesberg. It will, therefore, be necessary, to lay a supplementary statement, containing further particulars, before the Commission at its Pretoria sittings.

13. The facts stated and referred to in the foregoing *résumé* can be supported by Mr. James Henry Tyrrell, A.M.I.C.E., the company's engineer and manager, and by Mr. Ernst Danckwerts, the secretary of the company, both of whom are in Cape Town, and be further verified by other officials of the company, and by the company's books which are in the Transvaal.

By order,

ERNST DANCKWERTS, Secretary.

10 and 11, Mansion House Chambers, Cape Town,
25th September, 1900.

In the matter of the Johannesburg Tramway Concession, No. 234, granted by the late Government of the South African Republic, dated 16th April, 1889, now held by the Johannesburg City and Suburban Tramway Company, Limited.

Supplementary statement submitted on behalf of the said Company pursuant to Notice No. 9 of 1900, under protest, and without prejudice to, and reserving the rights and privileges of the said Company.

1. Mr. Ernest Danckwertz, the secretary of the company, has recently undergone a serious surgical operation, and is in Cape Town unable at present to travel, and a medical certificate to this effect is submitted herewith.

2. The auditors of the company are Messrs. George Hesse, F.S.A.A., and A. Eckart Beckmann. They were appointed auditors in 1891, and confirmed at the general meeting of the company on the 4th March, 1892, and have since been annually re-elected. They are in Johannesburg, and together with Mr. J. H. Tyrrell, the manager of the company, can depose, from personal knowledge, or from information obtained for the purpose, to the facts herein contained.

3. The solicitor of the company, Mr. H. C. Hull, is in England.

4. In the year 1890 the white population of Johannesburg could not have exceeded 20,000.

5. The companies then (in 1890-1) engaged in gold mining on the Rand were few in number, and (with one or two exceptions) of small capitals. It was then a very serious question whether gold mining on the Rand could be made profitable on an extensive scale, and the opinions of various experts of standing (*e.g.* Gardner Williams, general manager of De Beers Diamond Mines) were altogether adverse to the prospects of gold mining on the Rand. On the other hand sanguine persons had great confidence in the future of the Rand gold fields. There was in 1888-9 somewhat of a boom in respect of gold properties and gold companies at and in the neighbourhood of Johannesburg, but this altogether died out before the end of 1889, and then, and for some time onward the outlook for local enterprise was unsatisfactory, and there appeared little chance of a rapid or early increase of population or business at Johannesburg.

6. Consequently whether a local enterprise, such as the Johannesburg tramways would be a success was, with many persons, a matter of great doubt, and there was a great risk that those who obtained the original grant of the right to construct the tramways, and who found the large initial expenditure of £50,000 or more required for the construction of the first sections, would not receive a fair, or, indeed, any return for their energy and trouble and expenditure.

7. The first meeting of directors of the company was held on the 22nd October, 1889, at which it was reported that the £50,000 of working capital to be provided for the company was ready, and it was resolved to put £45,000 at fixed deposit, at the best rates, and at the next meeting, on the 26th November, 1899, the secretary laid the following paid deposit receipts of the Standard Bank on the table:—

£20,000 at 4½ per cent. for 12 months, due 30 Oct. 1890.
£15,000 at 4 ,, ,, 6 ,, ,, 30 April 1890.
£10,000 at 4 ,, ,, 3 ,, ,, 31 Jan. 1890.

8. The date of the "Acte van Cessie" of the contract of the 16th April, 1889, to the company is 27th September, 1889.

9. It is not possible to give precise particulars of the prices of the company's shares in Johannesburg, or the dealings therein as the Stock Exchange is not yet open, and no access can be had to files of financial papers or the like which would contain such information. But in fact the current prices of the shares in Johannesburg during 1891-2 (or thereabouts) were 4s. to 5s.; in 1893 they were 7s. to 10s. (or thereabouts); they then rose to some 15s. (or thereabouts); afterwards they went to par, and finally to a premium.

10. The persons mentioned in paragraph 2 hereof know nothing of what was suggested as the "promotion" of the company. But on behalf of the company it is asserted that if (as appears to be the fact) 175,000 £1 shares were in 1889-90 issued by the company to those interested in the grant of the rights to lay down and work the tramways as consideration for the transfer of such rights and the finding of the amount £50,000 cash for construction and working capital, such 175,000 shares under the circumstances existing during the years 1890 to 1895 were only a reasonable speculative consideration for the tramway rights plus the £50,000, cash plus the support to the company for some years. As to this matter the simple fact seems to be that these persons were sanguine as to the future of the Raad and Johannesburg, and were satisfied, that, given such increase and expansion as they hoped, they had a very valuable property in the privileges granted in respect of the tramways and that the consideration received from the company, all in shares and not one 1d. in cash, for the transfer of the privileges and the payment of £50,000 in cash was not more than a fair equivalent, having at the origin merely a speculative and contingent value, for what the company obtained—that the Rand and Johannesburg have expanded is an accident, which might not have happened and not happening the 175,000 shares would have had little value. In any case the public of Johannesburg and the Rand, large or small, has not been, and is not affected in the slightest by the number of shares issued as aforesaid. 24 Oct. 1900.

11. Of course, every shareholder in the company has been aware or has had full opportunity of becoming aware from the annual balance-sheet of the amount of the consideration for which the contract of the 16th April, 1889, was acquired by the company. Of course, too, the present shareholders have mostly acquired their shares since 1889-90, and had nothing to do with obtaining the agreement of April, 1889, or the transfer to the company, and are scattered over Europe.

12. The following has been the output of gold on the Rand, viz.:—

1889	369,557 ozs.
1890	494,817 ,,
1891	729,268 ,,
1892	1,210,868 ,,
1893	1,478,477 ,,
1894	2,024,163 ,,
1895	2,277,640 ,,
1896	2,280,892 ,,
1897	3,034,678 ,,
1898	4,295,608 ,,

13. The following are short particulars of the number of passengers carried and the total receipts of the company, viz.:—

Year.	Average Number of Passengers carried per Month.	Average Mileage run per Month.	Average Receipts for Passengers carried per Month.
			£ s. d.
1891	54,543	10,237	1,244 17 8
1892	76,377	11,553	1,784 5 4
1893	94,888	14,948	2,242 15 –
1894	103,122	18,450	2,406 8 10
1895	152,794	22,740	3,405 6 6
1896	256,129	31,009	5,560 8 –
1897	295,414	39,559	6,183 – 4
1898	236,799	39,950	4,938 5 5

14. In addition to the items mentioned in the last paragraph the company has for some years past carried letter boxes in their trams, which have been collected at the company's central office, at first for a small payment, and since March, 1898, this has been done free of charge to the Government.

15. The average fares would be 3·39d. per mile if the full fare of 6d. from terminus to terminus were paid by every passenger. Most passengers, however, buy 2s. 6d. tickets, entitling them to six 6d. rides; this would work out at 2·82d. per mile if all passengers took such books of tickets. Monthly tickets also are issued at 30s. each per month; this would work out at 1½d. per mile in an assumption of four rides daily by each holder of such tickets.

It is practically impossible to charge a smaller sum than 3d. This is for many purposes looked upon as equivalent to 1d. elsewhere, which is the lowest coin

24 Oct. 1900.

locally current—the price of the local newspapers was 3d. per copy. The charge compares very favourably with that in Cape Town, which has a very large population, and where the lowest fare is 3d. Cape Town is also on the coast accessible for supplies and materials by water carriage, without any further charges than for shipping. Whereas every tramway requisite has to be carried to Johannesburg a further railway journey of 700 to 1,000 miles. Fodder, too, is there very expensive, and this is a serious item in the company's expenditure.

16. No complaint has ever been made as to the amount of the fares.

17. The company's system is worked with every regard to economy and the public interest, and the public receive full benefit from the rights vested in the company. The only improvement that can be suggested in this respect will be the authority to the company to use electricity as a motive power in lieu of or additional to animal power.

18. The company's system is worked under bye-laws which were duly approved by the Executive Council by Besluit of the , and confirmed by Besluit of the First Volksraad of the 9th June, 1881, Article 342.

19. The amount of 5 per cent. of the gross profits, payable to the Government, was reduced to 1 per cent. after correspondence between the company and the Government by a U.R.B. of the 4th June, 1891, which further provided "that such resolution would also apply to all other than existing horse tramway concessions in the S.A. Republic."

20. In connection with the expropriation clause representations were made by the company to the Executive Council showing that owing to the delays in getting extensions passed, and through the repeated refusal to grant electric power, the company whilst studying the interest of the public, and giving satisfaction, was working at a great disadvantage, and felt itself entitled to an extension of time. This was considered by the Government in connection with other matters, and finally a contract was made between the company, and the Postmaster-General as to the carriage of mail matter, etc., as referred to in paragraph 13 hereof, and by a U.R.B. of the 18th March, 1898, authority to make certain extensions was granted to the company and the Executive Council resolves further "that it will make no use of the right of expropriation as contained in Article 31 of the Concession, provided the company henceforward carries out the post contract as entered into with the Postmaster-General, free of charge, during the continuance of the Concession." This Concession was in fact made as much out of regard to the above-mentioned representations of the company as in consideration of the postal contract.

21. The extensions of the company's system have been in each case duly approved before commencement by the Executive Council, and the works in progress have been supervised, and on completion approved by or on behalf of that Council; and they have been shortly as follows, viz.:—

During 1893 about 1¾ miles.
During 1894 about ¾ mile.
During 1895 about 1½ miles.
During 1896 about 1¾ miles.
During 1897-8 about ½ mile.

All these extensions were made for the convenience of the public, but various of them going to sparsely-peopled suburbs have hitherto not produced profits.

22. The company's system runs into some twenty townships, some of which are what are called "municipalities," but the majority are "private townships," the whole areas of which, roadways, and so on, are vested in private persons, usually incorporated companies, and in all such cases such private owners have absolute property in and full ownership over the roadways, except only so far as, if at all, the State by virtue of its original dominion, and its power of eminent domain can deal with such roadways, or other private persons by statutes or Besluit have obtained privileges thereover from the State.

23. The particulars herein as to "promotion" are supplied for information, but the company in the protection of the present shareholders protests against any inquiry into promotion or any other matter which may tend to prejudice or damage the value of their shares and while appearing before the Commission, respectfully refuses to recognise any action hereafter except by due process before duly constituted courts, which may destroy or affect their property or rights.

24. In the schedule hereto are set out various documents which, or copies thereof, will be delivered herewith to the Commission. Besides these there is a mass of documents at the company's offices at Johannesburg, some of which might be deemed to bear upon the enquiry which in the present condition of the railways it is practically impossible to move about, but of these the directors and general meeting minute books will be produced to the Commission.

25. The legal aspects of the matter, and points arising thereout are properly subjects for discussion and consideration before and by the Commission. But as to these the contention on behalf of the company shortly is:—

(a.) That the agreement of the 16th April, 1889 was validly entered into by the "Regeering" of the S.A. Republic.

(b.) That such agreement was duly confirmed, if any such confirmation was necessary which is not admitted.

(c.) That if any informalities occurred in connection with the said agreement (which is not admitted) these were mere matters of form not affecting the substance of the agreement or the execution thereof, and were waived by both sides.

(d.) That it is now too late to suggest that the agreement was not validly or formally executed—everyone has gone along for years relying on the validity of the agreement; £100,000, roughly, has been expended on the tramway enterprise in reliance on the validity, and on the good faith of the Government in relation thereto; large dealings in shares have taken place in such reliance, and the present shareholders have assumed that their property and rights were perfectly valid, and acquired their interest on such assumption; the first sections of the enterprise were opened eight years ago, the enterprise has been added to yearly, there has been constant correspondence between the company and the Government, or high officials representing the Government, plans in succession have been sent in to the Government, bye-laws have been made and approved by the Government or the Executive Council, and confirmed by the V.R., not a suggestion of invalidity or informality has ever been put forward.

(e.) That "Regeering" as used in and in connection with this agreement means the State itself, and its ultimate absolute power, which, for administrative and executive purposes, is exercisable by and properly only exercisable by the Staat President, and that the exercise of such power in the making of this agreement did not require the assent or approval of either the Uito R. or the V.R.—though in fact, it received both.

On behalf of the company,

Johannesburg, 17th October, 1900.

Schedule referred to in the above-written Supplementary Statement.

4th October, 1900.—Certificate of doctor.

February, 1892.—First report and balance-sheet of the company for the period, 27th September, 1889, to 31st December, 1891, including report of the general meeting of the company held the 4th March, 1892.

12th February, 1898.—Report and balance-sheet of the company for the year ended 31st December, 1897, including report of the general meeting of the company held the 4th March, 1898.

1896.—Copy of Memorial presented by the company to the Volks R., in opposition to the proposed grant of a Concession to Lombaard for tramways to be worked by electricity.

27th September, 1889.—"Acte van Cessie"—transfer of the agreement of 16th April, 1889, to the company.

(*Mr. Brice.*) In addition to the statements already put in, I have thought it best that the manager of the tramway company should be in attendance in case the Commission should wish to put further questions in addition to the evidence which was laid in Cape Town. One of the auditors of the company is also present. Unfortunately the secretary cannot be here, and I will put in a medical certificate, showing that recently he had to undergo a very severe operation, and is therefore incapacitated from travelling. 24 Oct. 1900.

Mr. JAMES HENRY TYRRELL, sworn; and Examined. *Mr. J. H. Tyrrell.*

2823. (*Mr. Brice.*) You gave evidence in Cape Town with reference to the affairs of the Tramway Company?—I did.

1824. You joined the company in 1890?—Yes, at the end of 1890.

2825. You have been through the books of the company at Johannesburg with a view of finding out the amount expended on maintenance?—That is correct.

2826. Will you tell the Commission the total amount expended?—The total amount expended, what we call ordinary maintenance, such as for cars, etc., was £47,640 15s. 3d., to the end of 1898.

2827. Of that amount, how much was expended on permanent way?—£25,660 17s. 3d.

2828. That is on line maintenance alone, on cars, repairs, Scotch carts, etc., but not horses?—Exactly on general maintenance.

2829. Not in the purchase of new cars, but for repairs?—No new stock. The actual balance-sheet shows that.

2830. (*Chairman.*) There are one or two particulars in your statement as to the condition of Johannesburg in 1889. Are they from general knowledge? You do not give any reference as to the information, but I have no doubt it is quite correct?—I went to Johannesburg in December, 1889.

2831. (*Mr. Brice.*) Will you describe to the chairman shortly what Johannesburg was like in 1889-90?—The buildings were very small and scattered.

2832. And the population at that time was stated to be about 20,000?—Yes, that is the outside, but we had no means of telling the population.

2833. (*Chairman.*) Of course the outlying townships had not been opened up?—Just so, and the buildings were of corrugated iron and wood, with the exception of a few brick buildings.

2834. How much mining was going on at that time? Had mining begun then?—Oh, yes.

(*Mr. Brice.*) As to the mining operations, the output is given on par. 11 of the Statement, which is taken from the annual report of the Chamber of Mines.

Mr. GEORGE HESSE, called; and Examined. *Mr. G. Hesse.*

2835. (*Chairman.*) You are the auditor of the Johannesburg Tramway Company?—I am one of them.

2836. When were you first elected?—It may have been in 1890 or 1891.

2837. And you have been auditor ever since?—Yes.

2838. When did you first know Johannesburg?—In October, 1888.

2839. Have you been through the books of the company for the purpose of making out a statement of the accounts expended in the construction, and the works incidental thereto?—Yes.

2840. Can you give the Commission the total figures?—Yes, the total comes to £95,579 5s. 10d.—that is for cars, live stock, stands, office furniture, stand buildings, tram lines, water supply, and plant. There was also a considerable amount expended on stores, etc., at the end of 1898, and £1,000 lodged with the Government of the South African Republic, making a total expenditure on capital account of over £100,000.

2841. (*Mr. Loveday.*) Have you got a detailed statement showing the exact expenditure?—Yes, up to 31st December, 1898, including stores in hand. They are not mentioned here, but if a copy of the balance-sheet was produced, I could tell you at once.

2842. Was it much over £100,000?—No, it was just above it.

(*Mr. Brice.*) I believe the amount is £101,000. I think the Commission may take it at that.

(*Chairman.*) Have you copies of the various balance-sheets, Mr. Brice?

(*Mr. Brice.*) Yes, I have, and I will put in all the balance-sheets since the establishment of the company.

2843. (*Mr. Ashmore.*) (*To Witness.*) The stores at the end of 1897 were put down at £3,900?—Yes, that would be right. At the end of 1898 the stores in hand would be a little over £4,000.

2844. Was there any considerable depreciation on capital account during 1898?—Not necessarily, because depreciation had to be added from the commencement of the company. What you have there in 1897 represents the book value as at 31st December, 1897, and the depreciation has been written off every year—money actually expended.

2845. In 1897 you wrote off for depreciation upwards of £4,000. Is that about the rate per annum that has been written off?—Well, I can only speak from memory.

(*Mr. Ashmore.*) The writing off for depreciation was considerable.

(*Mr. Brice.*) With regard to the position of the Johannesburg Tramway Company, it is quite clear that the Concession was rightly granted, was duly confirmed, and was acted upon in a proper manner in so far as any necessity for any confirmation by the authority of the Government in connection with this matter. I will hand to the Commission proceedings in the Volksraad material to this extent. It is not laid down that any discussion in the Volksraad upon such subjects as the Concession like that of the Johannesburg tramways was conclusive, but at the same time the statements made with regard to this Concession and others of similar nature in the Volksraad are to some extent material. As regards the Johannesburg tramway on the 9th June, 1891, bye-laws and regulations for tramways came up for confirmation of the Raad.

(*Chairman.*) Before we go into that, is there any resolution upon which to rely?

(*Mr. Brice.*) Yes, resolutions prior to that of the Raad. There is one of 16th May, 1890, No. 150, in the Executive Council, and also one of 4th July, 1890, No. 592.

Mr. Brice reads resolution of 16th May, 1890, as published in the "Staats Courant," 28th May, 1890, and proceeds:—

What was submitted to the Raad was to determine a resolution from the Executive Council that no one should have the right to construct and exploit within the boundaries of the State railways or tramways driven by other than animal power. I wish to call the attention of the Commission to what is disclosed throughout these discussions and besluits, namely, the difference between tramways driven by animal and driven by other power. These last cannot be conceded without the express consent of the Volksraad having been first obtained, or the Executive Council or the Government authorised by the Volksraad. The resolution in question goes on to state that the Government shall be empowered to publish such regulations, including penalty regulations, and to take such measures as may be necessary or desirable for carrying out resolution No. 1 that was submitted to the Raad, and it was agreed to approve of the matter almost unanimously, there being only three dissenting votes. Throughout the whole of this discussion power other than animal is what was accepted by the First Volksraad as requiring their authority, or the authority of the Ex-

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ecutive Council, whatever the meaning of that term may be. That was recognised from the beginning. That I submit is quite clear throughout the whole of the resolutions of the Executive Council and the Raad. Remembering the position of the South African Republic at that time it must not be forgotten that the Transvaal was essentially an agricultural and pastoral country, and the use of animal power for traction purposes was of extreme importance. It was, therefore, a bounden duty of the Government of the country to see that the pastoral and agricultural interests of the country were satisfactorily protected, and to see that farmers, especially owners and breeders of horses and other cattle received every assistance. These matters were left to the Executive Council to look after, and did not require to be submitted to the Volksraad for final decision. Then there is a resolution of 4th July, 1890, of which I believe the Commission has a copy. It reads as follows:—

Volksraad Besluit Article 592, date of 4th July, 1890.

The Raad having considered the item on the order, as well as article 18 of the report of the Estimates Commission, the memorials handed in by the Memorials Commission under Volksraad resolutions 250/90, 349/90, 356/90, on the recommendation of the Memorials Commission thereon, resolves:

1. To approve of the item.

2. To be unable to agree to the observation made by the Estimates Commission, viz., that the Government according to law ought not to enter into any contract or grant any concession without applying for tenders, as there is no law which makes provision therein on the lines expressed by the Commission.

3. The Raad further expresses its opinion that it is difficult to decide with exactitude which concession, licences, contracts, or agreements should be granted and approved of by the Executive Council or by the Volksraad; but

4. Resolves that such concessions to which the Commission refers as f.i., the concession for gas, electric light, for tramways propelled by animal power, for the better regulation of water supply to towns, in future will be sanctioned by the Volksraad, unless the State President, with the consent and advice of the Executive Council, may decide that the stress of circumstances is such that it is not possible to wait for the approval of the Volksraad.

5. The Raad resolves, further, to adhere so far to the report of the Memorials Commission, viz., that the Government or the Executive Council, without confirmation of the Volksraad, should not grant any concession for the construction of tramway lines in public roads and streets if such lines are propelled by other than animal power.

6. The Raad decides further to instruct the Government generally to have public institutions such as the installation of lighting works, etc. (as named under Article 4 of this resolution) as much as possible established direct or on its own behalf, after having in each special instance received the sanction from the Volksraad.

The Raad resolves to send a copy of this resolution to the memorialists.

(Was signed) F. G. H. WOLMARANS,
Acting Chairman.
(Was signed) C. VAN BOESCHOTEN,
Secretary V.R.

(*Chairman.*) This refers to the report of the Estimates Commission. Was that on a question of funds, and is it still applicable?

(*Mr. Brice.*) This refers to the Annual Commission on the budget.

(*Mr. Loveday.*) It includes a report of the annual payment made by the Tramway Company, and, of course, that would be submitted to the Budget Commission.

(*Mr. Brice.*) This second one is of importance in this respect. It sets forth that the Government ought not, according to law, to enter into any contract, or grant any Concession without applying for tenders. The Raad repudiated the resolution of the Commission, and expressed its opinion that it was difficult to decide whether such Concessions, licences, contracts, or agreements should be granted or approved of by the Executive Council or by the Volksraad. The fourth part of the resolution resolves that such Concessions to which the Commission refers, such as for gas, electric light, water supply, etc., must in future be sanctioned by the Raad, unless the State President, with the advice of the Executive Council, may decide that it is not possible to wait for the approval of the Raad. The fifth paragraph represents a sense of general bewilderment. I have looked into the Staats Courant, and have observed that there are very diverse opinions as regards the power of the Raad, and of the Executive Council. It states that the Raad resolves further to adhere so far to the report and the Memorials Commission, namely, that the Government or the Executive Council should not, without authority from the Raad, grant any Concession for tramways if such lines are propelled by other than animal power; if they are propelled by animal power they are left to the decision of the Government. Then I come to the discussion of 9th June, 1891, that is, the besluit No. 348 in the Statutes, page 281. As far as I can see the question as to whether or not these besluits should be published is not one of so much importance. Undoubtedly a large number of the besluits are published, and a great many are not. It seems to have been left to the editors from year to year, to insert some of these, and to leave out others.

(*Chairman.*) What would happen with regard to those which have been omitted in these Statutes, where would they exist?

(*Mr. Brice.*) Yes, there is such a reference, in the Courant, which is the authorised publication of the Government, and is known as the Government Gazette.

(*Chairman.*) The Editor of this other book would very likely publish only those which he thought were of public interest, just as in our own compilation of Statutes we have private Statutes, that is, local and personal Acts of restricted importance or interest, and public Acts which are of general importance. You have not any reference to that in the Staats Courant.

(*Mr. Brice.*) Yes, there is such a reference, in the Staats Courant, pages 131 and 132. I hand in extracts from these references, and I may say that all besluits are being handed in. Bye-laws and regulations come up for confirmation, and the importance of this matter to the Johannesburg Tramways Company is that they were confirmed in this way. Some members of the Raad said, "We have nothing to do with this, which is a matter for the Government. The Government have granted the contract." The answer to that was:—"No, we on our part do not admit that this contract was or should have been granted by the Government," and I will read to the Commission two or three of the extracts which will show you how it worked out. The State President said:—"No, we have no authority in connection with this matter except that we may have to impose penalties which can be enforced by the courts. We cannot make regulations, with the exception of any fresh regulation which involves the imposition of a penalty, such as a fine or imprisonment with or without hard labour, in case of default, in such cases the consent and approval of the Raad must be obtained to these regulations." The State President was very clear and explicit in his speech upon this subject. The Government had certainly the right to grant concessions for tramways driven by horse power. This is what Mr. Kruger himself said. That was agreed to by Mr. Burgher. He said the Volksraad has granted to the government the power to give such concessions. It was the same with Lombaard and others, and it was recognised fully by everyone that it is the full right and power of the Government to grant concessions for horse-power tramways; but as this was brought forward in connection with penalty regulations of the Raad besluit was passed. There is also the besluit of the 11th May, 1896.

(*Chairman.*) And there is another which has been handed up in connection with the Pretoria Tramway, article 1,001, of 26th August, 1895.

(*Mr. Brice.*) And I should also call the attention of the Commission to the besluit of 29th August, 1893, to be found in the Statutes, page 845, which was a Raad besluit approving of the report of the Commission. In that besluit it is set forth that the Head of the Public Works shall have supervision over all tramways. It is of importance in this way, that all communications took place afterwards with the Head of the Public Works Department. He was the official to whom every letter was addressed. It was for him to entertain any question with regard to working an extension. It was for him to supervise the works proposed to be carried out. He had to look after the line, and everything else connected with such a scheme, in Pretoria and Johannesburg, and others

associated with such undertakings had to deal with him, on the assumption that if there was any matter of invalidity brought forward he was the official appointed by the Government, and the proper person to whom to apply. I should rely strongly upon this as being a recognition of the existence of the tramways, and that they were being carried out in an efficient manner. It could not afterwards be said that the concession had some informality, or that the works had not been properly carried out. Then came the resolution of the 11th May, 1896, in this way. There was a proposal to lay down a double rail in Commissioner Street, Johannesburg, and that was brought before the Raad by the Executive Council. Arguments and discussions arose, and the Raad said, "We have nothing to do with it. It is the Government that must look after the line, and we decline to have anything to do with such a matter."

Mr. Brice referred also to the Staats Courant, pages 49 and 50, 1896, and to the Lombaard Concession referred to in article 376, 24th June, 1897, a discussion on the latter being found on pages 323 of the Staats Courant, and continued:—It may be said that that does not carry the matter much further, but there again it will be seen that the Raad recognised the concession as existing, and they refused to confirm the Lombaard Concession, which was for electric power, on the ground that it would interfere with the old concession. The discussion upon that was entirely favourable to the people who are working the present concession, and they pointed out that the inhabitants could ride a certain distance for 6d., whereas a cab would cost 1s. 6d., also, as I have already pointed out, there were the pastoral and agricultural interests of the Transvaal at that time to be considered.

(*Chairman.*) I suppose the agricultural interests really represent the country gentlemen of the last century in England, and they were very powerful.

(*Mr. Brice.*) The agricultural interest, I submit, is still of great importance, notwithstanding the existence of the goldfields. It was advanced as one of the reasons in favour of the present concession that, if the construction of electric tramways were authorised, many a poor man would be deprived of his means of subsistence. It would be absurd to say that the people who had expended their money and their energy upon the carrying out of such a need to which no objection had been taken could be confronted with the proposition that a Concession did not exist which had been recognised by the authorities of the country years before; and that is really the suggestion to the Commission on the part of the municipality of Johannesburg. It may be that such suggestions are put forward rather faintly; but still one has to deal with them, and I submit that on these besluits alone it is quite clear that the Concession was validly granted and confirmed. Besides that, I contend that the Government had full authority independent of the original situation of the country to grant contracts of this kind. It was suggested the other day by Mr. Wentzel that Regeering meant the State President, but I venture to say that it does not mean that.

(*Mr. Wentzel.*) I said the State President and the State Secretary, the State Secretary being a minor official.

(*Mr. Brice.*) I say that generally for all purposes of internal administration my proposition holds that the Regeering had full power. There is no definition of Regeering in these regulations or statutes, and if there is I should like to be referred to it. There is no definition of either of these two terms. I must further refer the Commission to the articles which lead up to this part of my argument. The term occurs two or three times in the Grondwet of 1858, whatever may be said about later Grondwets, that at least is the constitution of the Transvaal State. There were two later ones, one in 1881 and the other in 1896, 33 articles in all, and the word "Regeering" does not occur in either. What is also cited is the 33 articles which are in the Grondwet of 1844, after which comes the Grondwet of 1858, which was submitted to the burghers of the State, and was voted upon by them, but nothing was definitely decided on this difficult question—as to whether any less resolution had the force of law. However, this Grondwet was signed on behalf of the people on one side and on behalf of the Raad on the other, as the Raad existed then. As the result of my researches I think it may be taken for this purpose that the terms Regeering or Government only occurred twice, one of them is in Article 2: "The form of Government of this State shall be a Republic"; then the word Government is found in Article 17, in which the town of Potchefstroom to be the seat of "Government." Article 194 is, I consider, extremely material. It sets forth that all plaatsen and ground belonging to inhabitants are guaranteed by the Government or Regeering of the Republic in absolute ownership, but the right of the Government is reserved to lay down over such plaatsen a public way for the use of the inhabitants as required. It seems to me perfectly preposterous to contend that in Articles 17 or 194 the Regeering meant State President or State President and Secretary. It is the whole power of the State which guarantees the ownership. It is the State which is itself the form of Government as a republic, not the State President, and that I submit is the true and clear meaning and use of the word as used in these statutes and resolutions.

(*Mr. Loveday.*) How do you account for the phrase which is continually used in Government notices or resolutions: "Instructions of the Government with the advice and consent of the Executive"?

(*Mr. Brice.*) Undoubtedly the terms Regeering and Government or Executive were used synonymously, but I submit in a loose way. In the index to the First Volume of the Statutes, compiled by Mr. Kotze, the foremost Dutch lawyer in the world, these words are used synonymously, Regeering, Government, and Executive Council.

(*Chairman.*) There are three terms—the Government, the Executive Council or Regeering, and, thirdly, there is what you might call popular use of the word Government.

(*Mr. Brice.*) Quite so; the word Government or Regeering has popularly and very frequently been used in a sense as if it meant the President and the State Secretary, but it has never been used in that sense in any statute when any question of authority came up for consideration. The third and popular meaning of Regeering arose in this way: by Article 88 of the Grondwet that all besluits of the Uitvoerende and all official documents had to be signed jointly by the President and the State Secretary—that is, all besluits of the Executive Council and all public documents were to be signed by these two State officials as co-signatories, and conjointly. They were made responsible that the conditions thereof should in no way conflict with any existing laws. The result was that all such documents were so signed. The public eventually saw these two names at the bottom of documents, and assumed reasonably enough that the two persons signing were, for some purposes at least, the Government. But beyond that, I submit that there is no justification for assuming that the President and State Secretary were *de facto* the Government. The word as used in 1888 applies to all public documents, and that is how these two, or one or other of them or both together, were understood to be the Government: but I submit that there is no justification beyond what I have said for such a notion. The Grondwet divides the power of the State into three heads—the legislative power, which was in the Volksraad; secondly, the judicial power which is in the judges and landdrosts; and, thirdly, the administrative power, which is the division including the whole power of the State. There are a series of sections relating to martial law, but that is a part of the constitution with which one need not trouble in this connection. The Volksraad had to do with legislation and nothing else, and, with regard to the judges, they had nothing to do with new laws. The administration is vested in the President, and the provisions are very wide with respect to that. There is, first, the positive statement that the members of the Raad are not public officials; the expression is, "as representatives of the people they are not public officials." In other words, the Volksraad had nothing to do with administration.

(*Chairman.*) What section is that?

(*Mr. Brice.*) Section 30. Their duties ended, therefore, with the making of new laws where these are necessary. The President is made the first and highest public official (*see* Section 32)—the President of the Uitvoerende is the highest public official of the State; all other public officials are subject to him, except those who have to deal with the exercise of judicial power, who, in this respect, are free and independent of him. I might remind the Commission that it came to a crucial point at a recent period in the history of the Transvaal, but this provision existed at the very time when the Chief Justice was turned out. With this exception, the President had full power and control over public officials, and he could discharge them subject to his responsibility to the Raad.

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He was responsible for the introduction of Bills, and had also to secure a free and full discussion upon them so far as he could. He had to see to the execution of statutes, when passed, and once a year had to perambulate the towns and villages of the State, and receive local complaints and representations in the course of his tour. These are matters of extreme importance in considering the position of the President as representing the Government. He was, in fact, the Government in the sense that he was the agent of the Government. Under Section 81, which I think is of some importance, the President is entrusted with the regulation of the public service, with the postal administration, and public works, with this exception, that powder magazines were entrusted to him and another official together. Now, what public works were there in 1858? Such works in a purely agricultural country were necessarily of a simple description. Public roads hardly existed in the Transvaal in 1858. Corrugated iron represented the houses; mud walls represented the farm buildings. But public roads of some sort existed, and in the statutes provision is made for these public works over and over again, and these were public works *par excellence* with the supervision of which the President was entrusted; and that obtains down to the present time.

(*Chairman.*) The Surveyor of Highways would not have the right to grant tramways. The regulation of public roads in 1858 is a long way beyond granting an easement on a public road.

(*Mr. Brice.*) There is power to lay public ways over private lands as well as over public lands. Particular attention is paid to the question of public ways and outspannings. There is provision for reserving portions on the sides of roads where people and their cattle could remain for 24 hours. We have to consider—not the way in which English lawyers would look at the position and functions of a Surveyor of Highways, but the condition of the Transvaal at the time when these provisions were made. Every person in any way acquainted with the existing state of the country in 1858, will say undoubtedly that the President had full power to decide how this or that road was to be used, so long as there was no such interference with it that it ceased to be a public way. Then with reference to this matter there is also this question—what is the position of any other authority in connection with roads or streets? In 1858 there was a regulation for towns; it will be found in the 1st Volume of the Statutes, and provides in a general way for dealing with small towns and villages, but it contains no power enabling landdrosts or any other person to interfere with the roads. It provides for water supply, and sets forth how public water may be utilised. It provides for the registration of the people in cases of removal, but there is nohing in it which in any way gives the landdrost power as a local authority. Then comes the statute to which reference was made the other day—Act 10 of 1886.

(*Chairman.*) You refer to the Municipal Law?

(*Mr. Brice.*) Yes, and the section to which I wish to call your attention is section 34. I submit that that section in no way gives such local authority to a town council.

(*Mr. Wentzel.*) I will hand in a translation of that section later on.

(*Chairman.*) It gives to municipalities which are about to be created some control over certain things.

(*Mr. Brice.*) I submit that the only effect of the statute is that it creates a council of supervision, but which is without any effective power. It cannot impose any penalties with regard to the streets. It has a certain power over the lands belonging to the town, but as regards control of the streets and roads there is nothing of that kind in it. The Council has no possible power to say that a tramway is not to be laid down if the State President, either as being the Regeering, or as the agent of the Regeering, says that it is to be laid down. I have two other notes on that. The one is that the existing statute 17 of 1898, section 33, corresponds with section 34 of the previous statute. As regards Johannesburg, the position is this: Johannesburg was given a special town council, created by Law 9 of 1897. Down to 1897 Johannesburg had no town council, and when it was so created in that year the provisions with regard to its powers are as wide, and vague, and free from compulsory power as in the provisions of the General Act of 1886.

(*Chairman.*) The Special Statute of 1897 did not purport to clothe the Johannesburg Town Council with the powers of section 34 of Act of 1886, but gave them powers *in extenso*.

(*Mr. Brice.*) It gives a series of powers. It seems to me that as regards Johannesburg they are absolutely beside the question. Johannesburg had no town council at all down to 1897, when the tramways were already created and in existence. The Town Council of Johannesburg could not interfere with them, because the Town Council did not exist, and did not come into existence until long after this Concession was granted. It could not possibly have any effect upon the Concession. Another consideration is, Johannesburg is upon Government ground.

(*Chairman.*) Yes, it is understood that Johannesburg proper is upon Government ground, but what about the outlying townships?

(*Mr. Loveday.*) It is the three-mile radius; is it not?

(*Mr. Brice.*) Johannesburg is on Government ground, and the adjoining townships into which the tramways run are either on Government ground or are private townships. If they are private townships, as I am instructed, ownerships of the land upon which the houses are built in squares, streets, and roads is vested in private persons, or large companies which have obtained possession of them. Not that there is any parish existing having any power over the streets and roads, and the tramway company have been compelled from time to time to make agreements with the owners of the private townships into which we have taken our trams. We want no authority for that from the Government, for a private person can give us permission to run over his streets and roads. He can do so subject to one besluit, where the question came before the Volksraad as to the power of owners of private ground to allow tramways to be exploited upon or driven over their private ground.

(*Chairman.*) The greater proportion of what is popularly called Johannesburg consists of these adjacent townships. It is really the fact that any private owner there can commit any nuisance or do anything that he pleases, or cause any obstruction in the streets through which the lieges pass? You lay down the proposition that certain streets of Johannesburg, that is in the adjoining townships, are just as much private property as the back gardens of the owners who can do what they like.

(*Mr. Brice.*) That is my proposition.

(*Chairman.*) It is a strong order. I do not mean to say you are wrong; but it is a remarkable proposition.

(*Mr. Brice.*) Take such places as Eastbourne or Hastings; before these towns were formed into municipalities, and the streets and roads were dedicated, private ownership existed, and private persons could do what they liked with these roads and streets.

(*Chairman.*) There would be nothing at all against your point in the case of an unfinished town, but Johannesburg is scarcely an infant community now.

(*Mr. Brice.*) It is not the growth of a hundred years or two hundred years, but of a few years only.

(*Chairman.*) You were referring a moment ago to some resolution about the streets.

(*Mr. Brice.*) What I said was that a private owner could allow tramways over his land and over the streets. The besluit of 18th May, 1887, indicates that the question came before the Raad as to the power of a private person to allow tramways over his private ground.

(*Chairman.*) It looks as if the question were being seriously discussed so far back as 1887.

(*Mr. Brice.*) The besluit which was passed recognised this power on the part of owners of private ground.

(*Mr. Loveday.*) Do you contend that the owners of Jeppestown are still the owners of the streets?

(*Mr. Brice.*) The way in which it is worked is this: The assent of the Government to lay out a town is necessary. Then the Government imposes such conditions, on giving its assent as it deems necessary. So far as the streets or roads are concerned, I take it that regulations with regard to certain nuisances would be imposed, but nothing more than that.

(*Mr. Loveday.*) I always understood that the streets became Government property.

(*Mr. Gilfillan.*) All these private townships claim that they are the owners of the streets, or as soon as they cease to be streets they can do as they please. The surface right of the streets is merely given by the

owner. The Town Council on the other hand, claim that they have a right in the streets, and can prevent private owners from altering the usage of these streets. Private owners hold that they can at any time close a portion of a street and sell it as a stand or stands. As long as it remains a street, it is maintained that, by the rules and regulations of the Council and the old Sanitary Board, the municipal authorities had a right to continue it as a street. The position is a very peculiar one. Private townships have never given up their right.

(*Chairman.*) Not even to the surface?

(*Mr. Gilfillan.*) They absolutely claim that they are the full owners of the ground. The municipality holds that as soon as a portion of ground is declared a street, and is within its jurisdiction, it has a right to continue that portion as a street.

(*Chairman.*) The municipality did not go further than the surface rights. If a railway were to run underneath they would have to pay compensation.

(*Mr. Gilfillan.*) Some private townships have by private agreement vested the streets in the municipality, but that is an agreement which has nothing to do with the law.

(*Mr. Loveday.*) Do you know what the arrangement was between the Government and these private owners, when the proclamation was issued making these townships?

(*Mr. Gilfillan.*) The arrangement made with the older townships, such as Jeppestown, simply referred to what share of the plunder the Government should get out of the stand rents.

(*Chairman.*) It looks as if the Government were a party to the contention of the private owners that the streets might be turned into stands.

(*Mr. Gilfillan.*) The owner of a portion of ground applied to the Government, stating that he wished to lay out a township. He sent in his plans showing the streets and squares. The Government entered into negotiations with the owner as to what share of the stand and rents shall go to the Government, on condition that a proclamation was issued, and when that was settled the thing ended.

(*Mr. Brice.*) Even large portions of Von Brandis Square, Johannesburg, have been sold by the private owners to other persons.

(*Mr. Gilfillan.*) That is Government ground.

(*Mr. Brice.*) Then there are Marshall's Township, Barnato Park, and others.

(*Mr. Gilfillan.*) The decision in the Marshall's Township case held that the only people who could object were the standholders round about, and that the Town Council had no *locus standi*. With regard to Von Brandis Square the Town Council objected, but never assumed an attitude of active hostility. The Town Council were at the mercy of the Government, for they were constituted as a Council by the Government, which could have abolished them at any moment.

(*Mr. Brice.*) The point really is that a private owner could not be prevented from sanctioning the laying down of the tramways through his property, as is done at Doornfontein, where a large portion of the ground has been wholly built over. Private owners have full power.

(*Mr. Gilfillan.*) With regard to the case of Marshall's Township, in which I said the Council had no *locus standi*, that was the old Sanitary Board; it was not the present Municipality.

3356. (*Chairman.*) Were these private arrangements made by your company with the owners before the proclamation of the town or after?—I do not in the least know what the case is, but if the Government claim, as Mr. Gilfillan says, certain rights over the streets of a proclaimed township, yet the tramway company might go to the Government and say, "We made arrangements with the private owners by which they have granted us rights to go over the streets, but we are prepared to agree that you, the Government, shall control these streets"; and if the Government were satisfied they could thereupon proclaim the township and secure the rights of the public at the same time.

(*Mr. Gilfillan.*) I do not know the date when these arrangements were made, but the Government had already appointed what was virtually the Town Council—a health committee for Johannesburg, which included Jeppestown, Marshall's Township, and so on, in 1888, and there must have been a proclamation of the town. They distinguished between a "stands town" and an ordinary town. This is a "stands town," and it has never been clearly made out why it should be necessary to proclaim the town. It has been held that the Government have a right, without having any distinct power, but the town must have been proclaimed prior to 1888.

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(*Mr. Loveday.*) What we want to find out is what arrangement there was between the Government and these parties, and what rights were reserved when they became portions of Johannesburg.

(*Mr. Gilfillan.*) There are agreements with regard to these townships filed in the public offices. I do not on behalf of the Municipality take up the position of objecting to the legality of the concession when it was originally granted. I merely take up the position that the Town Council should be entrusted with certain rights of control over the trams, for the regulation of the traffic and the fares, and the introduction of a reasonable expropriation clause.

(*Chairman.*) You admit that it is right that the company should enjoy certain privileges, but at the same time they have also obligations to the public which must be carried out in the way usually done in most civilised countries.

(*Mr. Brice.*) I do not think we should have the slightest objection to substitute the Town Council for the Government.

(*Chairman.*) You have got rid of the most valuable clause in this Concession, so far as the public interest is concerned, that is the Expropriation Clause, for a consideration which is practically nothing, the condition of its abolition being that you should carry post and telegraph boys without charge. That was an extremely small consideration for the cancellation of the Expropriation Clause. I do not know if you are so instructed as to enable you to answer this question, but supposing this Concession stands, would you have any objection to provisions being put into it that there should be obligations on your part to submit your tariffs from time to time for revision, in accordance with the usual regulations that prevail in English tramway Acts?

(*Mr. Brice.*) I am not instructed on that point.

(*Chairman.*) There must be this in connection with all municipal undertakings, such as waterworks, tramways, lighting, and so forth. Such a suitable basis of obligation to the public, corresponding to their own rights, will very likely place them in a much safer position, and the same remark applies to your tramway company.

(*Mr. Brice.*) I should not support a monopoly in water, but, as regards the tramway, it is a totally different matter, and I should ask the Commission to separate the one from the other on such matters as tariff and expropriation.

(*Chairman.*) You are gaining the profits, and you ought to have a fair run, as the pioneers. But there ought to be an expropriation clause.

(*Mr. Brice.*) A good deal of negotiation and discussion took place about the Expropriation Clause. There was great difficulty in making extensions while the Expropriation Clause remained where it was.

(*Chairman.*) One sees that.

(*Mr. Brice.*) I would remind the Commission of the position in which we now stand in England as compared with a previous period. There would never have been another tramway made in England had the construction placed upon a certain section continued to hold good; but light railways and tramways have been made right and left because the Expropriation Clause is now a fair, reasonable, and proper clause. I think I might venture to say that I can put it to my clients that, given a fair expropriation clause, we might agree to its being inserted. The question is, what is a fair and proper clause?

(*Chairman.*) Your usual Transvaal Expropriation Clause is not anything like the Expropriation Clause in the English Tramways Act. Here it is on a basis of 21 years' purchase, taking the average of the best three years.

(*Mr. Brice.*) It stipulates that the price shall not be less than the cost price nor exceed twice the cost price, which practically penalises the skill, brains, and enterprise of those who have promoted and established this tramway undertaking. However much you may advance the public benefit and protect the public interest, however careful you may be in purchasing your material at the lowest rates, you can never get at more than twice the

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amount you have expended on the tramways. The basis universally adopted elsewhere is the market value. The tramway never would have been extended after the first two or three miles with the Expropriation Clause remaining in the Concession as it was. With regard to the basis of expropriation, it is the last three years, not the three best years, that have to be estimated.

(*Mr. Loveday.*) Your company might have been in a much more favourable position had you not watered the capital. You have spent £100,000, and the capital is £210,000.

(*Mr. Brice.*) The capital is £210,000. Considering the skill and enterprise that were put into this undertaking, it was extremely difficult to get capital together, and this must be taken into account.

(*Mr. Loveday.*) The company was over capitalised.

(*Mr Brice.*) With submission, no. The wretched condition of the roads must be considered, as that necessitated an enormous expenditure.

Mr. Brice, continuing his argument, said: Generally, when contracts or Concessions were granted, it was effected by the Regeering. There is not a single instance where the State President or the State Secretary, or both together, granted any Concession or contract. The contract or Concession of the Johannesburg Tramway Company was by the State President or State Secretary, as representing the Regeering or the Government of the South African Republic. In the case of the Pretoria tramways also it is by the Government of the South African Republic, as represented by the State President and the State Secretary. In every case these officials represent the Government. Attention has been called to Section 34 of Act 10, 1886, referring to the creation of town councils.

(*Translation handed in.*)

(*Mr. Loveday.*) That was subsequently amended.

(*Mr. Brice.*) Yes, it was replaced by the Article of 1897.

(*Chairman.*) Was this section altered?

(*Mr. Brice.*) Slightly in the language, which was restrictive if anything. The Town Council is authorised in respect to the purchase of fire hose, the erection of lamps in the streets and squares and other public places in the town, the building of bridges, dams, and other waterworks, the distribution of water to building plots, and the maintenance and control of all public streets, bridges, water courses, water furrows, and so on. Now, the term "control" there is a very vague and general word, and does not imply compulsory powers of any kind. The Town Council is very little more than a committee of citizens to advise as to what is to be done in regard to the way in which the municipality is to be maintained, and their mode of life. Section 35 illustrates this; it stipulates that the Town Council is authorised with respect to the establishment of markets and pound enclosures, under such regulations as shall be approved by the householders entitled to vote, and shall have power given to them by the Uitvoerende. They have power to impose regulations which in no way justify legal proceedings. It is really a consulting body of citizens rather than anything else. I submit that whatever powers there were with regard to public ways in towns were vested in the State President or State President and State Secretary under the Grondwet of 1858, by virtue of specific provisions therein contained in respect of public works, or as the representatives of the Government. That is the true position of matters, and that position remains at the present time, except so far as regards the special statute applicable to Johannesburg, which confers no compulsory powers whatever.

(*Chairman.*) In 1886 there was no municipality or sanitary board?

(*Mr. Brice.*) No.

(*Mr. Loveday.*) There was no Johannesburg, practically. Johannesburg was laid out in the beginning of 1887.

(*Chairman.*) Would the Sanitary Board have any of the powers of the Act of 1886.

(*Mr. Gilfillan.*) The Sanitary Board had wider powers really than the municipality. The Municipal Act of 1897 did not vest the ownership of the streets in the town, but merely the control of the streets.

(*Mr Brice.*) Who established the Sanitary Board?

(*Mr. Gilfillan.*) It was entirely under the authority of the Executive Council, by resolution afterwards submitted to the Volksraad. The Executive Council passed certain resolutions, and then got a Raad besluit authorising the Council to draw up regulations.

(*Chairman.*) That makes a good deal of difference, because, assuming that you were right that the Government had control of the streets by virtue of its powers, and nothing had divested them of its powers, in 1886 you get the regulations of the Council approved by the Raad, and that was before this Concession was granted.

(*Mr. Brice.*) I should like to see the two besluits, the one of the Executive Council and the other of the Volksraad. My instructions are that there was no resolution.

(*Mr. Gilfillan.*) The regulations cite the various besluits.

(*Chairman.*) We ought to have these, as it is very important.

(*Mr. Gilfillan.*) Of course, this is no part of my case as testing the validity of the Tramway Concession.

(*Mr. Brice.*) There is one other matter in connection with Johannesburg; in 1895 a Commission was appointed by the Raad, and reported, as I could understand, very favourably with respect to the Johannesburg tramways. It also reported in connection with the Pretoria tramways, but that is another matter. The only other point is the circumstances under which the Expropriation Clause was abolished. As I read it, that clause provided that the value was to be estimated on a basis of 20 times the average yearly nett profits for the last three years, and between the minimum and maximum as there put. It gave the officials acting on behalf of the Government the option of selecting their own time when to give notice, and enable them to make very advantageous terms on behalf of the public. With regard to that matter I rely upon the validity of the contract as it stands at present. I further beg the Commission to take into consideration the enormous amount expended on the maintenance of the Johannesburg tramway lines, caused by the disreputable state of the streets and roads, even having regard to the difficulties of the situation and the rapid growth of the town. There was no street or road worthy of the name even of a small town of 10,000 or 12,000 inhabitants. Enormous expenditure was required to keep the rails in good order. A heavy storm left the rails 2 or 3 inches above the adjoining roadway. I am informed that maintenance cost about £27,000, at least double the sum that would have been necessary had the streets been in good order; and every farthing of that money is so much profit taken out of the pockets of the shareholders, and which, in the case of a compulsory purchase, would enormously increase the cost. The Expropriation Clause was got rid of under circumstances which then existed. There was a strong necessity in the interests of the public for making further extensions, and this involved the raising of money. Other matters were brought forward as good reasons for getting rid of the Expropriation Clause. Negotiations had gone on between officials on both sides, and the result was a very fair bargain in the interests of all parties, and particularly in the interests of the town of Johannesburg itself. Johannesburg had trams constructed for the inhabitants at a time when otherwise they would not have been made.

(*Chairman.*) When was the Expropriation Clause cancelled? We have no proof of its cancellation.

(*Mr. Brice.*) On 18th March, 1898, by Executive Council resolution, Article 292.

(*Copy handed in.*)

(*Chairman.*) Is it a Concession in perpetuity?

(*Mr. Brice.*) No, it is a Concession for 30 years. There is a continuance clause, and in connection with this there is a question as to whether continuance should be on the terms of the present Concession or with the right of renewal of the present holders, or should be offered to anybody else? In conclusion, I would say, as regards anything that may be said about this Concession hereafter, I wish the position of the concern at the present moment to be taken into account. Our horses have been swept away by the Boers and our forage has gone. A good deal of damage has been done to our rolling stock, and the line is really in a bad state of repair. It will take six weeks or more to put it in good order when we do make a start, and the expense will be between £8,000 and £10,000 before we will be in the same position in which we were a year ago.

(*Chairman.*) What is your position about that? Are the home Government going to pay for all the damage which the Boers have caused in this country?

(*Mr. Brice.*) I am afraid we must take the liability. I

merely wish that it should not go to the Home Government that we have a tramway in fair or good order, because to place it in that condition something between £8,000 and £10,000 will have to be expended by us.

(*Chairman.*) Can we get the proclamations establishing Johannesburg and the other townships?

(*Mr. Gilfillan.*) I have never seen them. It was in 1886 when the Johannesburg proclamation came into force, but I have seen none of the early proclamations.

(*Mr. Loveday.*) The proclamations concerning the adjacent townships would be later.

(*Mr. Gilfillan.*) Johannesburg was the first. The proclamations should be in the State Secretary's office. 24 Oct. 1900.

(*Chairman.*) (*To Mr. Gilfillan.*) You have no instructions, but the Municipality rely upon future legislation?

(*Mr. Gilfillan.*) Practically that is what it amounts to. Of course, this discussion has gone over a great deal of ground. I wished to find the Executive Council regulations confirmed, and the Tramway Concession confirmed, as well as the regulations, and I went no further than that.

PRETORIA TRAMWAY—*continued.*

Mr. Brice stated that the same arguments applied to the Pretoria Tramway Concession that were applicable to the Johannesburg tramways. He added: A Commission was appointed by the Raad which specially reported in favour of the Pretoria tramway. In January, 1891, plans were sent in, and £1,000 deposited with the Government. This Concession has been agreed to. The works have been completed, and that, together with the Volksraad's besluits, covers the whole ground as to the validity of this Concession. Then there is a letter of March, 1899, from the State Secretary to the solicitors of the Pretoria Tramway Company reducing the amount payable to the Government from 5 per cent. to 1 per cent., and, taking that into consideration, a different contract was granted and the Concession recognised.

A copy of the agreement and a translation of the besluits were put in.

IRON CONCESSION.

(*Mr. H. T. Thompson.*) With reference to this matter I can only at present submit the contract to the Commission. The owners of the contract are the British and Transvaal Company, registered in London, and having their head office there. The representative of the company is in Delagoa Bay, laid up with fever. I would point out to the Commission that the contract expires in June, 1902, in about 18 months time. The provisions of the contract are that the concessionaire is granted the sole right of smelting iron for a period of 20 years, in consideration of the payment of a total sum of £21,500.

(*Chairman.*) What is the date of the contract?

(*Mr. Thompson.*) It was registered on 4th August, 1885. The date of the contract itself is 7th July, 1882. I may state that nothing has been done in the way of exploiting this contract with the exception that considerable expenditure has been incurred for rent and plans. Up to the present the carrying out of the concession has not been found practicable. A letter has been put in by Mr. Roos, who is appearing for an applicant for an iron concession under the scheme of 1896.

(*Mr. Ashmore.*) Was the £500 deposited?

(*Mr. Thompson.*) All the obligations have been fulfilled, the concessionaire has paid £17,000 to the Government.

(*Chairman.*) Do you wish us to report that this should be confirmed? If we were to report that this Concession should be upheld, you would have a damnosa hereditas, in the shape of an obligation to go on paying for a right which has cost you already £17,000. As your factory is not erected, you cannot do much business before 1902, when the Concession expires. Your best policy is to ask the Government that the Concession should be cancelled.

(*Mr. Thompson.*) I leave the matter in the hands of the Commission.

SELATI RAILWAY CONCESSION.

(*Mr. De Korte.*) I appear on behalf of the executors of the estate of Tolman.

(*Mr. Duxbury.*) I appear on behalf of the concessionaires. This matter is beset with considerable difficulty owing to the various circumstances. We have furnished the Commission with all documents bearing on this question, copies of the contracts, articles of association, and all correspondence so far as we have been able to obtain them, passing between the company and the Government, and such other correspondence as is set out in the list already handed into you. The difficulty just now is the absence of anyone here to give us any information with regard to the company. There are only two directors here, viz., Mr. Paul Marais and Mr. D. J. Esselen, the latter only acting as director since the absence from this country of Mr. De Jongh. Mr. Stegmann, who has worked throughout in this matter is also absent from the country. A permit has been sent down to him, but he has not arrived. We have done the best we could to collect all documents, but unfortunately we are not in possession of the originals. Had Mr. Stegmann been here, we might have been able to ascertain where the documents are at present. As a matter of fact, all the documents of the Selati Railway Company at the head office in Brussels were attached by the Belgian Government in June, 1895, in connection with certain proceedings they intended to take against some of the directors. Even so late as September of this year, we endeavoured to obtain access to these documents, but have been refused. Then, apart from that, there is another difficulty; as you are aware, an action was pending in the High Court of the late South African Republic between the late Government and the Selati Railway Company. In that action the Government claimed the cancellation of the Concession on the ground that the terms had been broken. We pleaded that the Government had no right to take us to court, and we asserted our right to arbitration under Article 47 of the Concession. The Court overruled this objection, and held that it had jurisdiction. We then went on to plead, and the pleadings had reached a certain stage. We pleaded amongst other things in reply to the plaintiff's claim, that with regard to the capital of the company certain payments had been made on the part of the concessionaires in this part of the world. Exception was taken because we did not specify the names of the individuals who were paid. The Court then ordered us to furnish particulars, and I believe that was the last step taken. A plea has been prepared and actually filed, but I am not prepared to say what it is, as I only discovered that plea this morning. It gives particulars as to the person who received various amounts for rolling stock.

(*Chairman.*) How did that become a material plea in

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an action by the Transvaal Government to set aside this Concession?

(*Mr. Duxbury.*) The Transvaal Government held that our share capital had been wrongly expended. We said in reply that that in the first place was a matter for the directors of the company, but that in any case the original shareholders did not do a single thing without the full knowledge and concurrence of the Government of the South African Republic. The Government knew all about it. We allege knowledge on the part of the Government, also that these sums were necessarily paid. It would be rather interesting if I read you a letter more or less bearing on the subject.

(*Chairman.*) How could sums be "necessarily" paid which are paid for a fraudulent object—virtually for squaring the Government?

(*Mr. Duxbury.*) We deny fraud so far as the company is concerned.

(*Chairman.*) How could it be a plea when it was urged that you had been guilty of fraud?

(*Mr. Duxbury.*) It was not the Government that was bribed, certain individuals received certain presents, and these presents the Government objected to.

(*Chairman.*) Somebody was bribed in order to induce the Government to grant you what you wanted?

(*Mr. Duxbury.*) We paid certain people to do certain work which it was said ought not to be charged to the capital of the company. No exception was taken to our plea, only the particulars were wanting. This was a question wholly and solely between the concessionaires and those persons interested. But the matter became of interest to us as a company later on, because the share capital had to be so expended as to provide this, and this was done with the full knowledge and concurrence of the Government. I wish to read a copy of a letter from the Transvaal minister in Holland as to this question. If you will refer to page 14 of the printed book in the hands of the Commission, you will see that the history of the Concession is this: A certain Mr. Vorster, not quite unknown in this part of the world, and unfortunately not available for our purpose, succeeded in obtaining from the Government a certain Concession. This Concession was for a line of railway to Komati Poort and the North, to serve the goldfields in that district. It was confirmed on 15th July, 1891, by a Raad besluit. When the Government confirmed that Concession, which was entered into by Dr. Leyds, as representing the Government of the S.A. Republic, the only condition attached to it was that it should not be transferred to any company without the consent of the Government. There seemed to be a good many conflicting interests at work. Very soon after the matter had been adjusted, so far as the actual signing of the Concession was concerned, there were disputes between Vorster and his friends on the one side and Baron Oppenheim on the other. Baron Oppenheim was a gentleman who was attempting to purchase the Concession. Although the terms of the Concession provided that those persons who obtained it should be allowed 9 months to float the company, certain steps were taken by Vorster and his friends to prejudice Oppenheim in some way. They even went so far as this, to insert in the official newspaper a notice to the effect that Vorster and his friends were the only persons entitled to deal with the Concession. Oppenheim cabled out to the Government here stating the position, and in reply he received a letter which you will find on page 14 of the printed book from Baelerts von Blokland. That letter clearly acknowledged that Oppenheim was the only person who was entrusted by the Transvaal Government with this matter.

(*Chairman.*) Was he a party to the original Concession?

(*Mr. Duxbury.*) He was not a party to the original arrangement between Vorster and the Government.

(*Chairman.*) The original Concession provides that £10,000 should be paid for the transfer.

(*Mr. Duxbury.*) Provided it was to go to no company. The whole matter appears to come to this: Vorster and his friends were not satisfied with £10,000, and were going to throw every possible difficulty in the way. The result was that on 15th February, 1892, Oppenheim made a new contract with Vorster, giving him an equivalent of £100,000. Everything points to the fact that the Government was fully aware of all that was going on. Although it was afterwards contended that there had been a breach of the Concession, yet they were a party to it, had full knowledge of what was proceeding, and were satisfied.

(*Chairman.*) Is there any authority by the Raad to alter the sum of £10,000 into £100,000?

(*Mr. Duxbury.*) I cannot find any specific authority by the Raad, but this does not really affect the company. Strictly speaking, these were purely preliminary matters.

(*Chairman.*) It affects the guarantee of the Government if the Government guaranteed the shares, if 100,000 were issued contrary to the authority of the Raad.

(*Mr. Duxbury.*) The Government did even more than that, and have guaranteed an issue of 500,000 shares.

(*Chairman.*) This parcel of 100,000 was granted in defiance of a condition in the Concession to the effect that they should only receive £10,000 in cash.

(*Mr. Duxbury.*) These shares were bought by Oppenheim.

(*Mr. Ashmore.*) This payment affects *pro tanto* the amount of money expended on the construction of the railway, which must have been diminished.

(*Mr. Loveday.*) Oppenheim was a director of the company. He has been tried as a director for defrauding the company.

(*Mr. Duxbury.*) And there is another case pending. My main difficulty in this matter is simply the question of procedure. With this action pending, we do not know what the Imperial Administration would wish in the way of evidence. We have handed in all these documents. Mr. Henderson, who holds a power of attorney from the London Board, can speak as to these statements.

(*Chairman.*) Is he able to speak of these facts of his own knowledge?

(*Mr. Duxbury.*) No, not of his own knowledge.

(*Chairman.*) Who would be able to do so? It is very much needed in the interests of the person who prepared this statement. Supposing this were a strict hearing in a court of law, who would be able to prove the facts as stated in the documents before us.

(*Mr. Duxbury.*) Mr. De Jongh, the former chairman of the company, but he is in Europe; also Mr. Johannes Rissik, who subsequently became chairman of the company, but he is with a commando. Really the only persons are Mr. Paul Marais and Mr. D. J. Esselen.

(*Chairman.*) How is it he is not here? Mr. Henderson has come all the way from Europe, and we put this case last in order to give Mr. Esselen a chance of being present. Since the 8th August notice has been given that this Commission was going to sit.

(*Mr. Duxbury.*) Our great difficulty is that we cannot get hold of any original documents, all the papers having been seized by the Belgian Government at the instance of the Transvaal authorities. At the present moment I am unable to tell you where the bulk of the papers are. We have made every enquiry to try and find out.

(*Chairman.*) A good deal of the history is borne out by the documents before us.

(*Mr. Duxbury.*) We cannot get very much that is new from any persons present. The Commission must remember that there was merely a local board in Pretoria, the head office being in Brussels. The facts were obtained from printed books that have already been prepared in connection with this case in Brussels, and had not been seized by the Government. They were in the London office.

JOSEPH HENDERSON, called; and Examined.

2846. (*Chairman.*) You are acting under power of attorney for the Selati Railway Company?—I am.

2847. You have compiled this printed statement which is before us?—Yes, in conjunction with Mr. Evan Thomas.

2848. Since what date has he been chairman?—He became Chairman in 1896, shortly after the issue of the share capital to the English shareholders. His connection with the company really dates from the control passing into his hands in 1895.

2849. Was he familiar with any transactions before 1895?—No, not at all. It was only in 1894 that Mr. Evan Thomas and the English shareholders went into the company upon the faith of the Government certificate of August, 1894. Upon that certificate the share capital was issued in England, and since the control of the company was practically in English hands, the difficulties commenced in this country. Prior to that there had been practically no difficulty at all in this country. The statement put in goes back to the commencement of the company. It gives all the history that we were able to get hold of.

2850. (*Mr. Ashmore.*) Who was the Railway Commissioner here?—Mr. Smit. The first Railway Comissioner was Dr. Leyds. Beelaerts von Blokland was appointed Commissioner in Europe to carry out all the negotiations.

2851. (*Mr. Loveday.*) Mr. Evan Thomas became connected with the company in 1894, after the alleged frauds had taken place?—Oh, yes; some time after.

2852. When did the company become aware of these alleged frauds?—The company as at present constituted became aware of them then, and if you take Baron Oppenheim and all the original directors, they were aware of them from the commencement.

2853. You say the control was practically transferred to English shareholders in 1895, since when no dividend has been paid?—A dividend was paid by the Government up to the end of 1893, after an expert's exhaustive report, who examined the whole books of the company. That report was considered perfectly satisfactory, and in it all the transactions of the company were duly set forth. That report was presented to the Raad and discussed by the Raad.

(*Mr. Loveday.*) The key to the whole position you will find in group 16 A, B, C, D. After February, 1895, when the control of the company became vested in British hands, there was a display of considerable hostility against it by the Government.

(Reference was made to letter from directors Selati Railway Company, 16th April, 1894, and letter from Dr. Leyds in reply, 12th June, 1894, also statement by directors, letter 14th June, 1894, and letter of local board to Government, also resolution of Executive Council.)

(*Mr. Ashmore.*) It is hardly fair to the Transvaal Government to say that they raised this opposition on the ground of their hostility to the English influence under which it has passed. The Transvaal prosecuted Oppenheim to conviction.

Mr. J. Henderson.

24 Oct. 1900.

(*Mr. Duxbury.*) It is a remarkable thing with regard to the prosecution of these former directors, that although all our documents and books were seized in Brussels in June, 1895, so that we had no books to form a balance-sheet, yet nothing was further done until our civil suit was instituted, and they became very active in their prosecution of these men. Everything was practically cleared up between the Transvaal Government and the company.

(*Chairman.*) There is ambiguity about this no doubt. Your people write on 14th June, 1894, with regard to douceurs and the Local Board was prepared to recommend that these should be refunded. In reply to that, they say that guarantees have been given that all sums which cannot be reasonably raised against the company shall be refunded.

(*Mr. Duxbury.*) The only matter really outstanding between the Government and the company was the question of these particular payments.

(*Chairman.*) That was one of the occasions when the Louis Warnant question came up.

(*Mr. Duxbury.*) It was brought up before it became a purely English company.

(*Chairman.*) You rely entirely upon the document of 31st July, 1894. Is that the only ground on which you say the Louis Warnant matter was abandoned?

(*Mr. Duxbury.*) I rely on the documents generally handed in.

(*Mr. Ashmore.*) When was the prosecution of Oppenheim begun in Brussels?

(*Mr. Duxbury.*) In July, 1899.

(*Mr. Ashmore.*) When was the first quarrel between the company and the Government?

(*Mr. Duxbury.*) The first quarrel was in 1895, on the subjects of routes. We complained of delay, and the Raad expressed the view that there had been delay in the surveys.

(*Mr. Loveday.*) When did Moiens go down to inspect the line after this trouble arose about the route? He went down early in 1896. When did he subsequently report—there was a lot of discussion in the Raad?

(*Mr. Duxbury.*) After the Commission was appointed on the route, Moiens went out there and inspected the route. That was in 1896.

(*The Report of the First Raad Committee on the Selati Railway put in.*)

FIFTEENTH DAY.

GOVERNMENT BUILDINGS PRETORIA.

Thursday, 25th October, 1900.

MEMBERS OF COMMISSION:

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary.*

DYNAMITE CONCESSION (continued).

GERHARDUS RISSIK, sworn; and Examined.

Mr. G. Rissik. 25 Oct. 1900.

2854. (*Chairman.*) You were in court the other day when a statement was made respecting a sum of £200 that was paid by Mr. Alberto Phillip, for the Dynamite Company, in addition to your salary. You heard that statement, and you wish to make a statement with regard to it?—Yes, I wrote you a letter.

2855. I have nothing to do with the letter. If you want to make a statement on it you can do so?—Yes. The case was this: When the appointment was made the former inspector of explosives had resigned, and I was offered the position. I was then in the employ of the Dynamite Company, and Mr. Phillip asked me to accept the position. I agreed to this. I looked up the salary, and found that it was put down at £1,200. Afterwards I saw the former inspector, and he told me that I would only get £1,000. Then I saw Mr. Phillip—we were friends—and I mentioned this to him. He said, "Oh, don't let that trouble you. Although it is put down in the estimates, which are coming on in February, at £1,200, if the Raad refuses to pay it we will make it up." That was all that was said at the time, and as long as I was Inspector of Explosives in the Government service I never took the money. It was only after the occupation of Pretoria, I think about the middle of August, that in a friendly way I mentioned this to Mr. Phillip, and he said, "You might as well have taken the £200 now," and I said, "All right." I felt very well what my position would be just leaving the Dynamite Company and then going into the service of the Government in this particular position. I told Mr. Phillip distinctly—we were friends, and I had always been an official of the company, and I am sure that some people will put a wrong construction on it—I said to him, "It must be distinctly understood that where I think the company is wrong I will go for it as I will go for anybody else if necessary, so that my former relations with the company will not influence me." The evidence as it stands, I felt, was very much against me.

2856. That is all you wish to say about it?—Yes. I may mention that when I accepted the position of Inspector of Explosives I knew very well what my duties and responsibilities were, and I never had any intention to neglect these after the sad experience we had here. Neglect of duty might cause a great accident, and perhaps serious loss of life. That I knew very well.

(*Chairman.*) Mr. Rooth, do you wish to cross-examine the auditors?

(*Mr. Rooth.*) Yes. Mr. Chairman, you asked me the other day for full copies of letters from the Hamburg office to the local officers—dated March, 1896, and December, 1895—of which extracts were put in. I have the copies here now, and I hand them in.

(*Letters handed in.*)

Mr. JOHN DOUGALL, auditor, re-called; and Cross-examined.

Mr. J. Dougall.

(*Mr. Rooth.*) I have gone very carefully through the auditors' report and annexures. They are exceedingly voluminous, and I think it would be better if we were to confine ourselves to matters of importance only.

(*Chairman.*) That is so. If ever the question of the actual items, the figures, were to be gone into—if it is ever necessary to go into these—this, of course, would have to be done before an arbiter.

(*Mr. Rooth.*) Where the company would have an opportunity of being represented, of course.

(*Chairman.*) Clearly. For the purposes of our report only questions of principle should be dealt with. There is a certain classification of the items which should be made, and which shows the deductions in respect of certain amounts on principle, and I think it would be convenient if you addressed yourself to these now without going into the figures.

(*Mr. Rooth.*) The first matter that was disallowed is in connection with the Government share of the profits for the first two and a-half years. There are certain correspondence and agreements between the Government and the company in regard to that, and that would be a matter for me to argue before you. The auditors, of course, have taken a certain view, but as they are not lawyers it would be a waste of time to ask them about that.

(*Chairman.*) Yes.

2857. (*Mr. Rooth.*) Witness cannot say whether the deductions are correct or not. Mr. Dougall, for the first two and a-half years it appears from the books of the company that the company paid Government nothing in respect of its share of the profits?—That is so.

(*Mr. Ashmore.*) The first question, then, is whether there should be paid to the Government, in addition to the 5s. per case, 20 per cent. of the profits during the two and a-half years up to the end of 1896.

2858. (*Mr. Rooth.*) That is so. Then, Mr. Dougall, for the subsequent years, 1897-9, you consider the company should have paid the Government about £80,000 more than was done?—Yes.

(*Mr. Ashmore.*) What is this based upon?

(*Mr. Rooth.*) For the subsequent years, 1897-9. The auditors say the Government ought to have received £80,000 more than the company paid.

(*Chairman.*) In respect of what?

(*Mr. Dougall.*) The 20 per cent. share of the profit.

(*Mr. Ashmore.*) In October, 1896, the 5s. per case disappears.

(*Mr. Rooth.*) The 5s. per case remains, but the 20 per cent. of the profits come in after that.

(*Mr. Ashmore.*) You are both agreed about the 5 per cent. and the 20 per cent. to October, 1896?

(*Mr. Rooth.*) Yes.

(*Mr. Ashmore.*) But the company and the accountants differ to the amount of £80,000?

(*Mr. Rooth.*) Yes. Of this £80,000, Mr. Dougall, a sum of £20,000 was paid to the Government on the 18th September, 1899, the receipt for which was handed in through Mr. Vorstman.

2859. (*Mr. Ashmore.*) (*To Witness.*) You admit that payment of £20,000?—Yes.

2860. (*Mr. Loveday.*) Was it still in dispute then?——(*Mr. Rooth.*) The receipt is as follows:—

(*Receipt read.*)

(*Mr. Ashmore.*) What is the date?

(*Mr. Rooth.*) 18th September, 1899.

(*Witness.*) That was in respect of a certain one-fifth share of £100,000 which was placed to reserve. That was all.

(*Mr. Rooth.*) Off the £20,000 owing to Government on the extra reserve written off.

(*Mr. Ashmore.*) Of course, it is a material question whether this was payable on account of the whole debt or a particular part of it.

(*Mr. Rooth.*) That appears from the letter of 15th September, which I put in, and which shows in respect of what that payment was made.

(*Mr. Ashmore.*) The accountants' contention is that it was on account of a particular sum. You say it was to liquidate the whole debt?

(*Mr. Rooth.*) Yes.

2861. (*Mr. Ashmore.*) You say, Mr. Dougall, that it is on account of reserve?—Yes.

(*Chairman.*) The receipt is in these terms.

(*Receipt read.*)

(*Witness.*) We do not admit what the receipt states. It distinctly says one-fifth part of £100,000, which was reserved by the company out of profits. It was not on account of the extra amount we claim.

2862. Why do you say that that is a difference which was subsisting in September, 1899, as regards a past writing off. This is a writing off, is it not?—Yes.

2863. What I want to understand is this: how you arrived at this sum of £80,000 as due to the Government for profits. In arriving at that sum of £80,000, have you taken into account what you say is an improper writing off?—We have done so.

Mr. Rooth's point, I suppose is that this receipt on the 18th September, 1899, shows the acceptance by the treasurer of the £20,000 in full settlement of all disputes in respect of writings off, one of which is £50,000?

(*Mr. Rooth.*) Yes.

(*Chairman.*) It may be considered in respect of that, or it may be considered as a payment on account of the total amount due to the Government.

(*Mr. Ashmore.*) What I understand is this. You, Mr. Rooth, say that that receipt is a receipt in full of all demands. The auditors' point is that it is only in full of all demands on account of writings off. The auditors charged the company with 20 per cent. on the writings off. The company objected to pay that, but eventually did pay it, taking that receipt. But that is not a receipt in full of all demands, but a receipt in full of all demands in respect of depreciation. That is the point.

2864. (*Mr. Rooth.*) Of course the documents speak for themselves. Mr. Dougall, that amount of £80,000 will be reduced by this amount of £20,000?—Yes.

2865. So that from your point of view there will be £60,000 owing?—Yes.

2866. Your report does not deal with the Government share of profits for 1899?—No. Your account for that year has not been completed. We leave that in abeyance.

2867. Then you have disallowed many items which have been charged in reckoning the Government share of profits?—Yes.

2868. And some of those items, in view of the explanations you have since received, you would have allowed if you had the information before you at the time?—Yes, had the minutes been brought before us on which authority was given, I daresay we would have done so.

2869. The auditors disallowed the 8 per cent. on the amount of shares allocated to the French company. Then they disallowed Lippert's selling commission and royalty. As a fact, you did disallow that? Why did you disallow that?—Because no value was received by the company in respect of that amount, and it was immediately written off as a dead loss.

2870. How do you know that the Government received no consideration?—No, I say the company.

2871. You say the Government should not pay the 8 per cent., that it should not be reckoned against the Government, and I take it you say the Government did not receive any consideration. Did the Government receive consideration?—Simply this. The company professed to start with a capital of £450,000. Of that £202,000 was not completed. It was a dead loss, written off from the company's profits, but on which a dividend was, of course, being paid to the shareholders to the detriment of the Government share of the profits. I did not allow the 8 per cent. on the £202,000 written off.

2872. Assuming your view to be correct, it would be all right with regard to the first year or two?—You are going on assumption. You are supposing that the Government did receive its 20 per cent. of the profits for 1894-95-96, and they did not.

2873. Well?—I do not know I should answer such a question. I think it would be fair if the Government received its share of profits.

2874. It would be fair to allow the 8 per cent.?—Yes, if you had allowed the Government their share of the profits.

2875. That amount of £60,000, being the balance of the £80,000, would be again reduced?—Yes, certainly.

2876. Then you disallowed Lippert's selling commission and Lippert's royalty?—Yes.

2877. Why did you disallow these?—For this reason, we took our stand upon the Volksraad regulations, wherein the Government is enjoined to see that the company shall be required to sell from the factory.

2878. Can you give me the section you rely upon?—The second part of Section 6, which deals with dynamite.

2879. You do not regard the Government and the company as partners in this concern?—By no means.

2880. You do not think it facilitates the business and possibly increases the consumption if the consumers are enabled without much difficulty to buy the explosives?—It is in the interests of the company to do so.

2881. Is it your view then that where there is anything profitable the Government must gets its share, and that any expense or burdens incurred to make the business a profitable one should be borne by the company? Your view, as I understand you, is this: the Government and the company are partners in this concern?—I don't recognise that view.

2882. You don't like the word partner. Anyhow, the Government has to get a share of the profits in the concern?—Yes, 5 per cent. per case, and, in our view, 20 per cent. of the profits arising therefrom.

2883. What do you call profits in an ordinary business concern?—I admit there is a difficulty with regard to the definition of this point. There is no definition to what extent that may be declared in the regulations. To a certain extent it is given in one clause of the contract where it refers to all expenses, wear and tear, and writings off; but these terms are very elastic.

2884. In a word, your explanation is that the company must bear all the burdens, all the liabilities, and all the expenses, but that where there is a profit the Government must come in?—That is so, with this explanation.

2885. What is your explanation?—We consider that the relation established between the Government and the Dynamite Agency Company is not that of a partnership; that it is more of the relation of a lordship over the company. The Government, under instructions from the Volksraad, opened the South African Republic territory to the company in the matter of the manufacture of ammunition and explosives. The field was opened, and the Government expected the company to come in fully equipped to do all the business at its own cost and expense. Well, the difficulty now is as to where the line shall be drawn as to the nett profit—the difficulty in respect of the writings off. You include all extraordinary expenses; but we are of opinion, in view of what took place when the question was before the Volksraad at the time, that the question of writings off was limited to book debts and so forth.

2886. In interpreting this contract you take into consideration extraneous matters?—Yes, matters before the Raad.

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2887. Supposing this had been a contract between A and B; supposing instead of the Government you had John Smith—would it be a fair thing of the company to expect John Smith to pay a share of the expenses?—With his consent obtained. It all depends on the terms of the contract.

2888. I put it to you as a contract. Supposing this had been a private concern; supposing the Government had nothing to do with it—would you, as an auditor, have felt justified in saying that all the expense should be borne by one of the parties, and that the other should only get a share of the profits?—It depends wholly on the terms of the contract.

2889. (*Mr. Rooth.*) I would like an answer to that question. Supposing it had been an ordinary private individual instead of the Government?——

(*Chairman.*) Do you mean working this contract?

(*Mr. Rooth.*) Yes.

(*Chairman.*) The question is, if in this contract you read John Smith, instead of the Government, would your opinion be altered by that?

(*Witness.*) If Smith occupied the same position as the Government? It is a difficult question to answer, because the circumstances of the two cases are not parallel.

2890. (*Mr. Rooth.*) I put this question to you: Supposing this had been an ordinary commercial undertaking, would you have considered yourself justified as an auditor in saying that only one of the parties should bear all the expense and the other get a share of the profits?—No, I don't think it would be fair; but this is in a different category.

2891. Do you consider that the company was not entitled to employ an agent in the business—to establish magazines, etc.?—Yes, at its own expense, but not at the Government expense.

2892. For the same reason, if it was John Smith, I suppose it would apply?—Yes.

2893. With regard to Lewis and Marks's royalty, what is your objection to that?—I give the same reason. I have no information as to the value or consideration received for these royalties paid out to Lewis and Marks and Lippert.

2894. The fact the Government agreed to this you take no note of?—No, not when it was done without the knowledge and consent of the Volksraad.

2895. Then you disallow the following items: Loss from explosions, contribution to the Johannesburg explosion, loss on powder trade, loss from fire?—Loss on powder trade—our objection to that is this: The company entered into that with their eyes open. The terms were such that it could not be made profitable. They undertook it knowing this, and were willing to accept the loss on the chance of making it up on the enormous profits of the explosives. Doing so, they must accept the loss, not the Government.

2896. And do you think the Government was not aware of that either?—Possibly. There was a sort of consideration; the company paid for the sake of the profits to be gained out of the explosives trade.

(*Mr. Rooth.*) With regard to the items disallowed, I have either to go into them absolutely or not at all. I am prepared with other questions. If we have to go into these things, such as loss by fire, there is any number of similar things that we will have to touch upon. If you will allow me, I would like to read the list of the whole of the objections of the auditors, and I would like to have the opinion of the Commission as to whether I should go into them. Mr. Dougall and Mr. Baikie can then agree that these are the points in dispute to which we take exception. (*The list of objections by the auditors was then read by Mr. Rooth.*)

(*Chairman.*) We think that all these are matters of a fair difference of opinion as between accountants, and in any report we make we will not express an opinion one way or another upon them, merely noting that you protest against them, and if it ever became necessary to go into them you would have a fair chance of presenting your views upon them before a tribunal, before which Mr. Dougall and Mr. Baikie would also be heard.

2897. (*Mr. Rooth*) (*To Witness.*) All these items appear perfectly clear and fair in the company's books? There is no hiding of them?—Oh, yes, they are perfectly clear.

2898. With reference to your first report, Mr. Dougall, there is this clause: "He (Mr. Vorstman) placed the Government contract at the disposal of the French Company, and undertook to cede the same to the new company, for which cession Nobel and Co. agreed to float the new company for £450,000 in £1 shares, and pay £20,000 cash to the new company." Further on you say, "And the £20,000 paid by Nobel and Company to the French Company for the cession of the Government contract has had to be refunded to Nobel and Co. by the new company," and here in your present report you also say: "We also beg to hand you herewith a summary of the agreement dated 6th February, 1894, between the old Explosives (or French) Company and the Dynamite Actien Gesellschaft (formerly Nobel and Co.), of Hamburg, which was procured for us by Mr. Findlay. In this the terms and conditions are given, upon which the Dynamiet Actien Gesellschaft undertook to form the new company, and to supply all explosives and materials, which the company was obliged to buy for the Dynamiet Actien Gesellschaft. We note here that the £20,000 payable by the Dynamiet Actien Gesellschaft, as per Article 7 of this agreement, was paid by the new company, and not by the Dynamiet Actien Gesellschaft." I would like to refer to a clause of the contract which I think you have miscontrued. It is in the last paragraph of Art. 7 of the contract. I will read it, in the English translation:—"The Dynamiet-Gesellschaft undertake that the new company will pay, as soon as the transfer shall be executed and recognised by the Government, £20,000 in cash to the Maatschappij (the old company), in payment of the transfer of their rights under the agency agreement."

2899. You have never seen the original contract?—No.

2900. The clause which I have read shows that the Dynamiet Actien Gesellschaft undertook that the new company will pay, as soon as the transfer shall be executed and recognised by the Government, £20,000 in cash to the French Company in payment of their rights under the agreement. That being so, Mr. Dougall, will you still adhere to what you said in your report? They only undertook that the new company will pay it?—Possibly it has not been quite accurately put, but the simple explanation is that the present company paid the £20,000 by cheque in London for this transfer and cession.

2901. In your report you said Nobel had paid this £20,000?—I may have been misled. I only had a summary of the contract before me. The French Company undertakes to get a private cession from Vorstmann to the new company, and Nobel and Company thereupon agree to pay £20,000 to the French Company.

2902. Your summary is incorrect?—The £20,000 appears as paid out by the new company.

2903. Then in your old report you say that they supplied dynamite No. 1 in large quantities at 1s. 3 5-8d. per kilo., and not at 1s. 3d. per kilo. according to the agreement. Dynamite No. 1, I do not know whether you are aware of it, contains 75 per cent.?—It was an oversight through our not knowing that 75 per cent. was the proportion sold at 1s. 3 5-8d.

2904. I wish to make this point clear, as it may be brought up against the company as an instance of bad faith. (*To Witness.*) In paragraph 3 of your new report you say: "We have made up a statement showing the nature of the settlement made with the liquidators of the old company and with Messrs. E. A. Lippert and Dr. Gobert, from which it will be seen that for £250,000 paid away in cash and fully paid-up shares, this settlement entailed an immediate loss to the new company of £201,954 18s. 9d. plus £17,000 for a worthless asset, the alleged value of the Leewfontein factory at the time of transfer to the company." Why do you call the Leeuwfontein factory a worthless asset? On what grounds?—For this reason, that according to the ledger account and the entries in the journal there has been written off four sums from 31st December, 1896, to December, 1898, reducing the amount at the debit of the account to a simple £3,000.

2905. Yes, but all that took place in December, 1896. This settlement of the allocation of shares and so on took place in 1894, and from your report it would seem you consider that the factory at the time it was made over was a worthless asset?—I simply was not aware of the condition. That £17,000 was not incorporated into the factory account until 1896.

2906. Do you consider yourself justified in calling the Leeuwfontein factory a worthless asset?—Yes, from my standpoint at the date I wrote this report.

2907. No; in 1894, when this transaction took place, do you consider yourself justified in saying that the factory was a worthless asset?—In 1894 this item did not appear in the books.

2908. Never mind the books. I ask you whether you are prepared to say with reference to the transaction that took place then that the Leeuwfontein factory with the grounds on which it was built could be called a worthless asset?—Beyond the entry in the books I am without knowledge of the asset.

2909. Never mind the entry in the books. Do you consider yourself justified in saying that in 1894 the Leeuwfontein factory, with the grounds in which it stood, was a worthless asset?—Yes, with this explanation, that my knowledge of the entry showed that the thing was worthless.

2910. Then you say that it was worthless?—It has proved to be worthless.

2911. You make a report here which says it was a worthless asset at the time. I ask you if you are justified?—The answer is the subsequent writings off.

2912. Will you answer yes or no? Will you say it was a worthless asset? Do you know the extent of the ground?—You ask me about the factory. I do not know anything about it.

2913. I take your answer?—I simply speak of it as at the time.

2914. You say this settlement entailed an immediate loss for a worthless asset?—No, I say the £201,000, plus this.

2915. That this settlement entailed an immediate loss to the new company for a worthless asset—what right had you to say that?—From the company's own books. Why should the company have the right to write off such an asset? They wrote the whole thing down to £3,000 in three years.

2916. Are you not aware that an explosion took place before this writing off took place?—I understood the dismantling of the factory was to a great extent caused by their removing their plant as much as they could to the new factory, with the purpose of discontinuing the manufacture at the old factory.

2917. And the explosion?—It may have been contributory to the cause why the amount was written off.

2918. You will not maintain now that that was a worthless asset in 1894?—Yes, I do. There is nothing to show for it in the books other than what I have stated here.

2919. Never mind the books?—I cannot go beyond the books.

2920. Do the books show what it was worth in 1894?—No.

2921. Further, you know nothing about it. If you refer to paragraph 4 of your report, you say: "The manufacture of explosives from the company's own nitroglycerine appears to have begun towards the end of 1896." That information is taken from the company's books?—Yes.

2922. The company's manufacturing costs are made up half-yearly?—Yes.

2923. Therefore, you are not prepared to state now that the manufacturing did not commence in, say, July, 1896? There is nothing in the books which would prove the contrary of that fact?—So far as I have seen. I judge that as only eighteen cases of blasting gelatine were shown as manufactured to the end of the year.

2924. There are 8,000 cases of dynamite and gelignite for the half-year. What I want to get at is this: it may have been that the manufacture commenced in July of that year?—Yes, it may have done.

2925. And your statement that the manufacture appears to have begun towards the end of 1896 is not justified from the books?—It is explained by the next sentence in the report, where it says that eighteen cases were manufactured.

2926. If you will kindly refer to page 5 of your report, where the profits are mentioned?—Yes.

2927. With reference to these profits, you have not deducted the charges for insurance, interest, general charges, royalty, Government share of the profits, etc.?—No. I took the nett profit per case, out of which must be provided the cost of the general administration.

2928. (*Mr. Ashmore.*) You have not included those items to which Mr. Rooth refers?—

2929. (*Mr. Rooth.*) Those items which I have enumerated have not been taken into consideration?—No.

2930. With reference to the undivided profits in September, 1899, I see you say they amounted to £506,000?—That is the figure in your balance-sheet.

2931. But that was only a trial balance-sheet. There are large deductions that still have to be made?—I suppose the company will make provision for bonuses.

2032. There are large deductions still to be made. You would not take that figure as final?—No.

(*Mr. Rooth.*) With reference to the item of bullets, I would just like to hand in this letter. It appears that on the 27th June, 1899, the manager of the factory wrote the following letter, which I shall put in:—

No. 139/99.

Baviaanspoort Factory, 27th June, 1899.

De Zuid Afrikaansche Fabrieken voor Ontplofbare Stoffen Bpt, Pretoria.

DEAR SIRS,—Indent No. 3,031.—We herewith beg to enclose an indent for various cartridges required in order to supply our customers with instead of having to buy such goods locally. Ten tons nitrate of potash and one ton dogwood charcoal is also included for manufacturing purposes.

Factory Cash.—Kindly have cheque ready on Thursday next, 29th inst., for £300, made payable to Mr. C. E. Idle, who will be in town on that day.

Yours faithfully,

DE ZUID AFRIKAANSCHE FABRIEKEN VOOR ONTPLOFBARE STOFFEN, BEPERKT, KRUIT FABRICK.

J. C. IDLE, Manager.

Enclosures:—
Indent No. 3,031 in duplicate.
Invoice No. 1,600.

(*Mr. Rooth.*) This order came, not from the Government, but from the local factory to supply local customers.

(*Mr. van Hulsteyn.*) That is not the point. The point is not that the company originally imported these things.

(*Chairman.*) It was pointed out yesterday, Mr. Rooth, that the purchase by the company you are representing was made before the war, in 1899, and it was said that the purchase was made—and, of course, it might have been so—for sporting purposes. The point made against you was that they were sold by your company in May, 1900, to the Government, when the war was on.

(*Mr. Rooth.*) Anyhow, I wish to show that they were not ordered by the Government, but by the local factory in order to have these goods to supply our customers with.

2933. (*Mr. Ashmore.*) Mr. Dougall, up till October, 1896, the company paid the Government 5s. per case royalty. Your contention is that the company was liable to pay 5s. per case, plus 20 per cent.?—Yes.

2934. On what portion of the regulations do you justify that contention?—Section 11 of the regulations:

"The Government shall be required to demand from the agents to whom it may delegate the execution of these instructions, apart from the rental of the powder factory as described in Article 5, of not less than £3,750 per annum, a sum of 5s. for each case weighing 50lbs. nett of dynamite or other similar explosives sold (with the exception of the matters referred to in the first paragraph of Article 6). Over and above this the Government shall be entitled to 20 per cent. of the surplus profits."

2935. (*Mr. Rooth.*) I do not know what translation Mr. Dougall has before him. There are various wrong translations. The word is 20 per cent. of the "surplus" profits. I do not know if that is in Mr. Dougall's translation?—No, it only says here 20 per cent. of the profits.

2936. (*Mr. Ashmore.*) Another point that you make is that the company had to pay 5 per cent. commission to Nobel and Company on all purchases from them of materials and explosives?—No, 2½ per cent. on all nitrates, and 5 per cent. on all other material outside of explosives which were sold at a price.

2937. And you claim that, the company having its own agency in Hamburg, this is a charge which is not justified?—I don't think so.

(*Mr. Rooth.*) I have the general acting manager of the factory here, and I would like to call him. I would like to point out that some of the translations in that red book are incorrect, and I would ask the Commission to take the sworn translations put in of the contract and regulations.

(*Chairman.*) We should be glad, when you come to argue, if you would say where there is a mistranslation.

PAUL CONRATH, Acting General Manager of the Factory, duly sworn, put in the following statement:—

Mr. P. Conrath.

25 Oct. 1900.

Witness has been continuously at the dynamite factory at Modderfontein from March, 1895, until the present time. He took a leading part throughout the building of the works, and from the time that manufacturing began was chemist in charge of one or more departments until the departure of the general works manager, Mr. Hoenig, in June, 1899, when witness became acting general works manager, which position he now occupies.

Every diligence was used in erecting works from the time of witness's arrival on the basis of there being three distinct dynamite works and corresponding acid departments, workshops, dwelling-houses, etc. A considerable disturbance took place, however, at the time of the Jameson raid, as about half the number of blacks then employed directly by the company went away, and could not be replaced for nearly three months, while of the blacks employed by contractors a large number also left the premises. Building materials which were at that time on their road up from the coast were stopped en route, and there was a great deal of delay in getting what was wanted, in consequence of which the works were delayed by at least six weeks. The different work in the factory include a number of separate departments which were completed on different dates, but by the first week in June, 1896, there were completed and ready for use all essential departments for the manufacture of explosives, including two explosives works, one sulphuric acid works, and one nitric acid works. On 10th June, 1896, the factory commenced making sulphuric acid, on the 15th June, 1896, nitric acid, and on the 29th June, 1896, explosives. At that date the third explosives department was almost completed, and very great progress had been made with the fourth explosives factory, and with the second sulphuric acid works. The actual manufacture of explosives as distinguished from the cartridging of imported lump explosives was commenced at the No. 2 explosives factory on the 29th of June, 1896, at No. 1 factory on the 27th July, and at No. 3 factory on the 27th of August, 1896. Witness was informed that the building period would not expire until towards the end of November, 1896, at which time four dynamite factories were complete, with the exception that as regards the fourth factory a few small matters were left over to be completed whenever the factory might be required, and the second sulphuric acid works was then nearly complete.

There were then three sulphuric acid concentration works entirely finished, and the fourth could have been finished at very short notice. Witness will hand in a statement of the quantities of explosives manufactured at Modderfontein in each month from July, 1896, to December, 1899, as distinguished from explosives cartridged out of imported lumps, and having been shown a list of the quantity sold by the company during the same period, witness will state with regard to the output for the month of May, 1897, of 18,162 cases, being the first month in which the output exceeded the sales, that of this quantity about four-fifths were manufactured at two explosives factories, and only one-fifth at the third factory, which was therefore used only to a slight extent, while the fourth factory was not used at all, so that the sales were covered with the greatest ease. Witness will further state that the factory was adequately equipped, even in November, 1896, to have produced at any time from then onwards more than enough explosives to cover the sales, and that if at that date or at any time afterwards the factory had been required upon short notice, as, for instance, the six weeks' notice referred to in the contract with the Government, to produce enough to cover the current sales without taking into consideration the stock on hand in the country being what had been imported by the Government, witness could have done so, as all the buildings and plant used in May, 1897, or enough of them were available in November, 1896, and that even as regards the period from June to November, 1896, a very considerable quantity of explosives could have been manufactured. Witness will explain, however, that the manufacture of explosives is a dangerous manufacture, especially when carried on by workpeople brought together for the first time and under novel conditions, and that it is contrary to precedent and regarded as dangerous to life to start new explosives works on anything like a large scale immediately upon their completion. No hard-and-fast rule can be laid down as to the quantity which can be safely manufactured at new works, but a very much larger quantity could have been safely manufactured at Modderfontein at the beginning in excess of what was actually manufactured.

The quantities of explosives appearing on the list handed in were manufactured in the fullest sense of the word, and were quite distinct from the lump explosives imported from Europe during the building period, and cartridged after necessary treatment at Modderfontein. The relatively low output of explosives after August, 1897, and until the end of June, 1898, was not in consequence of any inability whatsoever to manufacture very much more, but there were at that time very large stocks of explosives on hand, and witness believes that a low output was desired at the time in order that the stocks might be reduced. The very large output in the latter half of 1898 was obtained by working at only three of the five explosives factories then ready. For a short time during July, 1898, work was carried on at one of these factories with double shifts, but otherwise the whole production was with single shifts, and therefore very much less than the maximum that could have been attained. The output for the half year ending December, 1898, during which three factories produced 139,085 cases of explosives, was at the average rate of 92,700 p.a. cases for each factory, so that there can be no manner of doubt that the factories as originally planned were at all times large enough to cover the sales, even from the first week of June, 1896, and that, even taking into account that at the beginning considerations of safety to life made it desirable to work on a small scale, but taking also into account that in June, 1896, there was a stock of explosives on hand and en route of upwards of 120,000 cases, it can be safely asserted that even from that date the company has always been in a position to cover the requirements of the country in the sense that it could have produced enough even then to have prevented any danger of the exhaustion of the stocks.

Since the dates named various additions have been made to the factory in various departments, and everything has been done to keep the output capacity of the works a long way ahead of the immediate rate of sales, and there has at all times been a large stock of explosives on hand, ranging mostly from 100,000 to 150,000 cases. Witness will produce a list of stocks of finished explosives, raw materials, acids, packing materials, fuel, etc., on hand at the factory at 30th September, 1900, and will state that there is, in addition, a large stock of sundry stores and building materials valued at approximately £30,000, and included in the factory cost.

Successful experiments have been made for the utilisation of pyritic residues from the mines in substitution for imported sulphur in the manufacture of sulphuric acid, and a large contract for the supply thereof was agreed to on both sides and ready for signature at the outbreak of the war. Witness has investigated a number of samples of nitrate of potash and guhr of local production, but none of these have been found suitable for the factory. There were employed at the factory before the outbreak of war about 650 whites and 2,000 blacks.

Witness had had considerable experience as a chemist in the manufacture of explosives before coming to South Africa, and will submit expert evidence as to the advantages from various standpoints of the home manufacture of explosives as compared with their importation. Explosives can be rendered dangerous from shock, frost, and moisture, and lose a portion of their strength when subjected to extreme variations in temperature, especially so when crossing the torrid zone. Instances have been known of an explosion from a railway collision and from the stranding of a vessel. It cannot fairly be expected that the very large quantities of explosives shortly to be required for the Transvaal, and representing a quantity of from one to two thousand cases per diem, which quantities would be several days *en route* from the nearest port, and several weeks *en route* from the place of manufacture, can be imported for any length of time without the probability of accident which may seriously affect the safety of passengers and neighbouring dwellings and property. Besides the source of risk already referred to, there is especially in South Africa a further risk from lightning to which imported explosives would be exposed, but from which those made at the factory are exempt, as they are made and stored under effective lightning conductors. If the enormous quantity of explosives required in this country had to be imported special arrangements would have to be made for the destruction of such of them as may have been damaged or become unsafe *en route*, and it is difficult to see how suitable arrangements could be

made for this and for testing with any degree of thoroughness the quality of the explosives imported, while, on the other hand, it is a simple matter to test for quality upon the completion of manufacture at the local factory under Government supervision, which would be both simple and effective. The factory renders Government supervision easy and effective not merely in respect of quality, but also in respect of explosives not getting into unlawful hands. Mining operations in the Transvaal require for the most part the use of the strongest explosive known, viz., blasting gelatine, which is produced by the company in probably far larger quantities than at any other factory in the world. Experiments made by witness justify the belief that on an average imported blasting gelatine loses several per cents. of its strength on its road, and is by that much weaker than the article here manufactured. But every 1 per cent. deficiency in the strength of the explosives used involves a loss of 1 per cent. upon nearly every other item of mining costs, as the labour of making a bore hole and nearly everything else are wasted to that extent if the explosive fails to bring down its full quantity of ore. It is reasonable to suppose, therefore, that every 1 per cent. deficiency in the strength of the explosive represents to the mines a loss of several per cents. of the cost of the explosives, so that, other things being equal, blasting gelatine of local manufacture is worth much more to the mines than the same explosive from abroad.

2938. (*Mr. Rooth.*) That is your statement. Are the statements contained therein correct?—Yes.

2939. (*Chairman.*) In April, 1896, were there workpeople at the factory in sufficient numbers to work the factory effectively when it was erected?—Yes.

2940. Then why do you say these people were brought together for the first time under novel conditions?—We had people from Austria, from England, from Italy, from Germany, and the mode of manufacturing explosives is not the same in every factory.

2941. And, therefore, was it in your judgment dangerous to work the factory at that date under those circumstances?—No, because the chemist in charge has to go through the works beforehand with the workmen, and the chemist being competent, he advises the workmen beforehand how they are to do their work.

2942. Then why did not the workmen work the factories to their full extent at that time if they were safe?—I cannot say that, because I have to do my work according to the orders I get from the manager.

2943. Quite so, and he has stated here in his statement that the manufacture of explosives is dangerous, especially when carried on by workmen brought together for the first time under novel conditions, and that it is contrary to precedent to start new explosives works on anything like a large scale immediately on their completion. That is true, is it not? And is it for that reason that you were unable to start these works on anything like a large scale immediately on their completion?—My personal opinion is that after a month's training it could have been worked satisfactorily.

2944. And what was the opinion of the manager?—I am of opinion that Mr. Hoenig thought as I thought.

2945. Then how do you account for not working?—I wanted to say before that the manager does not start working of his own free will, but only on orders from the vice-president of the company here. It is not in the power of the manager to do what he likes. He receives his orders from Pretoria.

2946. Whoever decided it, the factory was not considered to be sufficiently equipped with skilled workmen to work at that time?—At what time?

2947. In April and October, 1896?—They would have been able to work.

2948. Why didn't they?—Because they did not get the order from Pretoria.

2949. (*Mr. Ashmore.*) And this is not the reason you have given us. It is somebody else's reason?—Yes.

2950. Whose reason?—I cannot tell whose reasons they were. The manager did not get the order to work.

2951. (*Chairman.*) The statement which has been read as yours says that the manufacture of explosives is dangerous, especially when carried on by workmen brought together for the first time under novel conditions, and that it is contrary to precedent and regarded as dangerous to start new explosives works on anything like a large scale immediately on their completion. What is the revelancy of that remark unless it is to excuse you for not starting work when you say the factory was ready?

(*Mr. Rooth.*) I think the witness misunderstood Mr. Ashmore's question with regard to the reason.

2952. (*Chairman.*) What is the relevancy of that remark which purports to be yours?—I wish to state that from the start we worked very cautiously.

2953. That is not an answer. On page 4 of what purports to be your statement you give an elaborate reason why it is dangerous to work under novel conditions in works which are only just completed. Was that intended to justify you in not working in April, 1896, or October, 1896?—We did work.

2954. Yes, but not to any large extent. For less than half the requirements of the country?—In May, 1896, we manufactured more than had been sold.

2955. In October, 1896, the company said they were able to manufacture 80,000 cases, and between October, 1896, and October, 1897, 120,000 cases were imported. Why didn't you manufacture those 120,000 cases if you were able to manufacture them?—I do not know.

(*Mr. Curlewis.*) In October, 1896, the company asked leave from the Government to erect further factories within a period of two and a half years, so as to be able then to fulfil the requirements of the country, showing that they were not in a position to do so at the time.

(*Mr. Rooth.*) Mr. Vorstmann explains that these were only prospective requirements.

2956. (*Chairman.*) You were in the service of the company when the Industrial Commission investigated the affairs of your company?—Yes.

2957. Did you give evidence before it?—No.

2958. Did any representative of your company give evidence except Alberto Phillip?—I don't know.

2959. You were the chief technical engineer?—Not at that time. Mr. Hoenig was at that time.

2960. Do you know that a great point was made before the Industrial Commission of the non-completion of this factory within two and a half years?—Yes.

2961. Can you account for the fact why no one was called to give similar evidence to what you have given to-day before that Commission?—No.

2962. (*Mr. Curlewis.*) You remember in February, 1897, the Volksraad appointed a Commission, and that Commission visited the factory? You showed the Commission about the factory?—In 1897? No.

2963. Who was there?—Mr. Hoenig.

2964. You speak with equal authority as to what happened in 1896 and 1897, as if you were the manager. You remember the Commission. Were you present when Mr. Hoenig was showing the Commission about?—No.

2965. Did you take any part whatsoever?—Yes, I was manager of factory No. 3 at that time, at Modderfontein. This was only one part of the factory.

2966. (*Chairman.*) You mean the Industrial Commission?—No; the Volksraad Commission.

2967. (*Mr. Curlewis.*) How many workmen had you employed there in April or October, 1896?—I do not know.

2968. I understood from your report that the workmen were there. I understood there were sufficient workmen?—There were sufficient, but I could not say the number.

2969. If you say there are sufficient you must know more or less. How many are required to work the factories?—We had three factories, and the workmen would be ready to work.

2970. How many would be necessary for the factories you had there? You told the Chairman you had sufficient workmen to work the factories to their full productive extent. How many workmen were necessary to work the factories in April or October, 1896, to their full extent?—About 200.

2971. Is that all that is required?—White workmen to work these factories.

2972. Is that to turn out 150,000 or 160,000 cases? Is that all that is required? What is the largest number you had?—650 whites.

2973. When was that?—Just before the war.

2974. How much did you turn out then?—About 34,000 cases per month.

2975. (*Mr. Van Hulsteyn.*) Do you know, on the basis

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of 400,000 cases per annum, what proportion of blasting gelatine, dynamite No. 1, and dynamite No. 2 would be produced out of a total production of 400,000 cases? I want to know if the estimate in this statement is correct?

(*Witness.*) It says 70 per cent. blasting gelatine.

2976. Is it more or less correct as far as you know?—Yes, it is about correct.

2977. Are these cost prices correct too?—I want to know whether these are the manufacturing prices at Modderfontein. These are what the manufacturing itself would cost. There would have to be added the general costs.

2978. We know that. It is only the cost prices at the factory. It is an estimate drawn up by somebody on behalf of the company, showing what the profits would be on annual consumption of 400,000 cases on these lines?—I want to point out, as to the costs, that the general cost of the factory would have to be added.

(*Mr. Rooth.*) Before that document is handed in I would like Mr. Van Hulsteyn to prove it. I do not know what document it is.

(*Chairman.*) That does not matter, if this witness says it is substantially correct.

(*Mr. Van Hulsteyn.*) Perhaps Mr. Rooth would be able to say whose handwriting that is?

(*Witness.*) I think it is Mr. Robinow's—he is the first man in the office—but I cannot swear to it.

(*Mr. Rooth.*) Mr. Robinow is the bookkeeper. He is not here.

(*Mr. Van Hulsteyn.*) We can put Mr. Bourne in the box and ask him whether that is right or wrong.

(*Mr. Rooth.*) Mr. Bourne says the figures with regard to the selling prices are correct.

(*Mr. Van Hulsteyn.*) The cost is correct, the selling price is correct, and the profit is correct.

(*Chairman.*) The only thing the witness says he cannot speak to is the probable saving in explosives.

(*Mr. Van Hulsteyn.*) I don't think we can prove that.

(*Chairman.*) I do not take it that there is anything at all in that.

2979. Who is Mr. Robinow?—The head of the office at Modderfontein.

2980. And your belief is that that is in his handwriting?—Yes.

(*Mr. Rooth.*) Mr. Vorstmann says it is not in Mr. Robinow's hand-writing.

2981. (*Chairman.*) In whose handwriting is it, Mr. Vorstmann? You have been sworn?—It is one of my clerks' handwriting.

2982. Did he make that out under your superintendence?—Not under my superintendence, but very likely on my suggestion.

2983. And you would supply him with the materials?—Yes.

2984. And the materials would have been given by you after consultation with other officials?—This is, I think, approximately correct.

2985. The whole paper is in your clerk's handwriting, and you supplied him with the materials. Did you arrive at the materials after consultation with the expert?—These figures I got from the books.

2986. And this item about the probable saving in the cost of explosives?—It was an estimate.

2987. It was an estimate made by experts and communicated to you?—Either made by them or by myself.

2988. (*Mr. Rooth.*) Mr. Conrath, during the building period you had weekly meetings of the heads of departments to compare notes and discuss the progress of the works?—Yes.

2989. And of these meetings minutes were kept?—Yes.

2990. And before giving your evidence here you refreshed your memory by reference to these conference minutes?—Yes.

(*Mr. Rooth.*) Mr. Chairman, I may mention that I have here a huge batch of minutes of meetings the heads of departments had from time to time, which we are perfectly willing to hand in in case there is any doubt in the mind of the Commission as to the veracity of the statement made in regard to the capacity.

(*Chairman.*) You must conduct your case in your own way. Anything you like; we do not undertake to guide you.

2991. (*Mr. Rooth.*) You have refreshed your memory again, Mr. Conrath, and you are positive the evidence you have given with reference to the capacity of the factory in June and October, 1896, is correct, and that the company was able at that time, if called upon, to manufacture explosives sufficient for the requirements of the country, exclusive of the stocks on hand; and you are positive that evidence is correct?—I do not want to say from one day to another, but in a very short time the company would be able to manufacture them.

2992. If they received the six weeks' notice stipulated in the contract?—Yes.

2993. With regard to manufacturing, you only manufactured on instructions received from the Pretoria office?—Yes.

(*Mr. Ashmore.*) Mr. Rooth, is it your point that they did not manufacture unless asked for a fixed quantity, which they had to sell?

(*Mr. Rooth.*) No, I would not put it that way. One of the points in favour of the company is this: the company was required to manufacture the requirements of the country.

(*Chairman.*) I will tell you what it has got to do. It has got to complete and bring into working order within the shortest possible period, and at the utmost within two and a-half years, factories for the manufacture of dynamite and other explosives of such nature and in such quantities as the needs and requirements of the South African Republic may demand. It is not merely that they shall have the shell of a factory equipped, but that they shall have one or more factories completed and brought into working order.

2994. (*Mr. Rooth.*) Was the factory in November, 1896, in a state fit to manufacture explosives in the full sense of the term?—(*Witness.*) Yes, the factories were in perfect order. From July, 1896, one factory was actually working slowly.

Mr. Rooth called F. C. BOURNE, who was duly sworn.

Mr. F. C. Bourne.

(*Mr. Rooth.*) I would like Mr. Bourne to read his statement. (*Mr. Bourne proceeded to do so, as follows*):

MR BOURNE'S STATEMENT.

I. The present dynamite company was promoted and formed in 1894 by an Anglo-German group of European explosives manufacturers, in terms of an agreement of 6-2-94. The controlling company of the group was the Nobel-Dynamite Trust Company, of which witness was then secretary. He was present at the principal negotiations incidental to the company's formation in Europe and in the Transvaal, whither he accompanied a director in 1894 to form and register the present company. Witness was manager of the company from 1-5-95 until the outbreak of war, and was in charge of the company's European office throughout that time.

The agreement of 6-2-94 was between the Trust Group and the liquidators of the old concession company, at whose disposal Mr. Vorstman had placed the contract or concession of 25th October, 1893. By the agreement the Trust Company was to form a new company such as contemplated by the concession, and its capital was fixed at £450,000 in £1 shares, of which the Trust Group was entitled to take up, and was under obligation to find subscribers in cash for £220,000 at par. The remaining shares were reserved by the agreement for issue without cash payment, viz:—

22,500 shares to Dr. Gobert,

25,000 ,, ,, Lippert, and

182,500 ,, ,, shareholders of the old concessionaire company in conversion of their holdings therein at the rate of 1 share in the new company for 1 A Preference Share or 2 B Shares of the old company.

The proposed application of these 230,000 shares was communicated to the Government and to the Chamber of

Mines. Witness will show by reference to their printed report for 1893 that the Chamber of Mines put it before the State President and Executive Council on or before 12-4-94 (p. 95), and also before the Volksraad (p. 97). Draft Articles of Association setting out the application of the shares were submitted by witness to and approved by the Government with various alterations, but none affecting the proposed application. The Articles were finally approved by the Government about the end of May, 1894. The company was formed and registered on the 8th June, 1894.

With reference to the statement in the opinions of Mr. Reitz and Mr. Curlewis that the issue of the 230,000 shares "greatly prejudiced" the Government's share of profits, for which reason Mr. Reitz (but not Mr. Curlewis) considers that the issue was fraudulent; witness will give evidence that some substantial assets apart from the concession were received by the company through the issue of the 230,000 shares, but that even if these assets be left out of account the Government could only be affected to the maximum extent of 20 per cent. of 8 per cent. = £3,680 per annum; that whether the Government was to be prejudiced or not even to this extent depended on a question of legal interpretation and in no sense on any concealment or deceit; and that this allocation of shares was necessary in order to carry out the Government's desire to get rid of the claims for compensation made by the old concessionaire company, and supported by the French Government, while at the same time securing the participation of English and German manufacturers in the monopoly, against which participation a large minority of the shareholders of the old concessionaire company had voted. Witness cannot positively remember, but believes this matter was specially discussed with the Government at the time in connection with the new stipulation inserted in the 24th May contract, whereby the company guaranteed the Government 20 per cent. at a minimum of 2s. 6d. per case.

By the agreement of 6-2-94, other charges to be borne by the company, and which were brought to the notice of the Government and the Chamber of Mines equally with the issue of shares were

a royalty of 2s. per case for three years to Lippert,
a royalty for the whole term to Lewis and Marks,
and a selling and delcredere commission to Lippert, who was to act as sole selling agent.

By negotiations at Pretoria in May, 1894, the royalty to Lewis, and Marks, and Lippert's commission were materially reduced, viz., to:—

	Royalty.	Commission.
On first 40,000 cases sold p. a.	1s. 6d. per case	7 per cent.
On next 20,000 ,,	1s. 3d. ,,	6 ,,
On next 20,000 ,,	1s. ,,	5 ,,
On subsequent quantities	1s. ,,	4 ,,

The rate of selling commission previously paid by leading importers of explosives to their own agents in the same market had also been reduced to 4 per cent.

Witness will put in the Chamber of Mines report for 1894, from which it appears (pp. 97-98) that the chamber submitted particulars of these charges to the Volksraad, and memorialised that body to provide (1) that in the event of a factory for the manufacture of explosives being established the capital of the company shall not exceed the amount of cash actually paid up; (2) that no special commissions or royalties as referred to herein before shall be levied on explosives for the benefit of individuals or companies at the expense of the State. The Volksraad resolved, as appears from pp. 106-7, "to reply to memorialists that their request cannot be granted as the matter was decided by the Volksraad last year."

II. With regard to the implication that the contract or concession of October, 1893, imposed a great burden on the mines simply in the interests of the concessionaire, witness will put in the Chamber of Mines report for 1893, and point out first as to prices:

That while in a memorial to the Volksraad presented in April, 1893 (p. 81), the chamber had stated that they were "credibly informed" that dynamite is being delivered at "Algoa Bay at 42s. 6d. per case," and that the charges to Johannesburg brought the cost up to 67s. 6d. (including duty at 3d. per lb. plus 7½ per cent. ad val.), they wrote President Kruger later, viz., 17-9-3 (p. 91), that they could "lay the best No. 1 dynamite down in Johannesburg free of Transvaal duty, at 72s. 6d. per case." At the then rate of duty (3d. per lb., 7½ per cent. ad val.), and allowing for agency charges, storage and delivery, this price about corresponds with the 95s. per case inserted by the Government one month later in their contract with Vorstman, while from p. 106 it will be seen that the only firm offers for delivery in an open market recorded were at 85s., subject to the 7s. duty ruling down to August, 1892, and 95s after the duty of 3d. per lb. was introduced. The chamber's report shows that the mines paid this price for imported dynamite 1, prior to the granting of the concession.

Secondly, the policy of establishing a local factory had found considerable support among the mines. Thus in an official letter to the Minister of Mines (p. 107), the chamber, while preferring free trade, "fully appreciated, as it had done all along, the desire of the Government to render this country wholly independent of all other States with respect to the supply of explosives by manufacturing them within the State, and was willing to assist Government to attain that end."

They asked Mr. Jeppe, the member for Johannesburg (p. 108) to inform the Volksraad and Government that in order to "secure the establishment of a factory" and "make its success certain" they would join in giving it a bonus.

Later, on 15-9-93 (p. 108), they offered to build the factory.

Again on 15-11-93 (p. 111) a trust director records in a letter to the chamber that at a meeting of the chamber "a number of those who voted in favour of my proposal are almost as desirous as your Government to see a factory erected in this country."

Witness will show, thirdly, that there was no overwhelming conviction at the time that the monopoly would prove a highly remunerative one. Out of 220,000 shares at the disposal of the trust group they voluntarily gave up at par 52,000, and agreed to the par price because of doubts about the business being specially remunerative. In a letter of 29-3-94 to the chamber (p. 92), Mr. Kraftmeier, a trust director whom witness accompanied, stated that the trust had no intention of buying any more shares, although they could still be had at par, and as a matter of fact the trust group did not buy any more.

The Chamber of Mines' reports show that the gold output of 1893 was scarcely a third of what it reached in 1898. It is the great growth in the output that has so greatly increased the Dynamite Company's profit, but so great a growth was not at the time generally foreseen, indeed on 12-4-94 the Dynamite Committee of the chamber recorded (p. 94), "it is not unreasonable to estimate that during the currency of the contract (1893-1908), the average annual consumption will be 150,000 cases."

Before the war the consumption reached the rate of 400,000 cases p.a.

The creation of a great factory with its dwelling houses, water supply and railway on the bare veldt was an unprecedented undertaking as regards explosives manufacture, and was attended with great uncertainty as to the cost of erection and maintenance, and as to cost of manufacture.

Witness was aware that the import period of 2½ years must prove profitable, barring explosions, but the trust directors did not at the time count with certainty on a large profit over the fifteen year term as a whole.

The trust directors looked upon the participation of their group rather as forced upon them by circumstances than as justified by any sure prospect of exceptional profit.

Witness will state in respect of these circumstances that he had been secretary to the trust company from before the date of the original Lippert concession, that the trust company declined to purchase it when offered, and steadily opposed it until its cancellation in 1892.

When the new State monopoly was established in 1893 the trust company heard that copies of it and of the contract with Vorstman had been sent to the British agent at Pretoria and various foreign consuls, with an intimation that the Transvaal Government were advised that no breach of any international treaty was involved. Legal advice obtained by the trust showed that if the Transvaal were bent on establishing the monopoly, as frequent Volksraad decisions extending over many years made evident, there was no remedy. Witness and directors of the company had one or more

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interviews with Mr. Fairfield at the Colonial Office, and it did not appear that any efficient support would be given the trust against the new monopoly. The German branch of the trust group were on the other hand positively informed by the German Government that it would press for a share of the monopoly being given to German interests, but would not support opposition to the monopoly. It was only after this strong advice that the trust group, which had just previously declined an offer from a large group of shareholders of the old concessionaire company, concluded the arrangement ultimately embodied in the agreement of 6-2-94.

The negotiations were favoured and largely promoted by the Transvaal Government. Had the trust declined then the directors felt it would be handing over the trade in the most important market in the world to the French group and its entire loss to the Anglo-German group.

One of the directors in particular, Mr. Wickmann, who had at first while in Johannesberg entertained strong hopes of the new monopoly being upset, entirely abandoned them on his return to Europe after hearing the views of the British Colonial Office and of the German Foreign Office.

III.—With regard to the building period of 2½ years for the erection of the works; witness will show, first, that the application rejected by the Volksraad, 14-9-94, to limit the size of the factory to one capable of making 40,000 cases p.a., was not suggested by any doubts as to whether a larger factory could be got ready in time. Witness accompanied Mr. Kraftmeier, a director of the trust, at negotiations with the Chamber of Mines. In March, 1894, the Dynamite Committee of the chamber showed no pronounced disinclination to acquiesce in a general settlement of the dynamite question provided a suitable basis could be found. The Chairman told witness that perhaps the best thing to be done was to try to alter the concession on lines that would allow the company to spend as little as possible on a factory and to import as much as possible. Witness with Mr. Kraftmeier was present at a meeting of the State Executive Council about 16-4-94, at which they asked for permission to limit the size of the factory to be first built to the 40,000 cases solely on the ground that they hoped if this were acceded to to get a settlement with the mines. Ultimately the Government and Executive Council agreed to ask the Volksraad, and Section 2 was accordingly inserted in Article 6 of the contract of 24-5-94.

This result was communicated to the Chamber of Mines, and negotiations were resumed with that body in May, 1894, principally on the basis of the company surrendering to the mines one half, and in some cases more than half of all profits over 10 per cent. The offers made to the chamber are set out (pp. 94 and 104) of their report for 1894. The offers were rejected, but witness did not abandon hopes of an amicable settlement at a later date, and on 8-6-94, Mr. Vorstman wrote a letter to the Government formally asking them to submit the question of a 40,000 case factory to the Volksraad as arranged.

Witness will show, secondly, that the application submitted in writing to the Government on 8-6-94 to date the 2½ years building period in case of need from 24th May, 1894, was in reality made much earlier by word of mouth, and that Mr. Kraftmeier and witness pressed the Government for a satisfactory assurance on this point before they would proceed to form the company and provide the capital. On the 7th or 8th June they were informed by Government that the application was agreed to and would be confirmed if put in writing. Mr. Kraftmeier and witness thereupon registered the company at once on the 8th June—(the Government had approved the Articles of Association in May)—and Mr. Vorstman on the same date put the application about the 2½ years in writing before the Government. Witness had previously had an interview with the State Secretary and State Attorney who, after considering the legal question, both informed witness that in their opinion the intended assurance was legally valid.

In the third place witness will put in the reports issued by the directors to the shareholders dealing with the question of when the factories were actually ready and authenticate them and supplement the evidence of other witnesses as regards the period within his knowledge to show that every diligence was used to get factories ready on a scale large enough to cover the entire consumption.

IV. With reference to Mr. Reitz's opinion that there is a conflict between the contract and the dynamite regulations with respect to the issue of permits, witness will put in the Chamber of Mines' memorial to Volksraad printed p. 98 of the Report for 1894, where they petitioned the Volksraad to provide "(3) seeing the factory would be protected by importers having to pay 37s. 6d. per case duty, that permits shall be freely issued to applicants under Article 2 of the Dynamite Regulations, and that Article 3 of the said regulations shall only be brought into operation for high reasons of State." Also, pp. 106-7, the resolution of the Volksraad "to reply to memorialists that their request cannot be granted, as the matter was decided by the Volksraad last year."

V. With reference to the estimate in Mr. Chamberlain's despatch taken from a Volksraad Committee Report, that for the years 1897-1900 the company's output would fall short of the sales by 430,000 cases, witness will state that the actual deficiency was 86,169 cases (735,939—649,770), and that this was not due to any inability to make more.

VI. With respect to international law and the London Convention, witness will hand in and authenticate copies and translations of opinions by Professor Westlake, Professor Asser, Professor Ehrenberg, Professor Jelinek, Mr. Renault, and Mr. Asquith, and extracts from Blue Books.

VII. That the amount spent on the works at Modderfontein down to 31-12-'99 was £862,065 15s. 9d., and that a large quantity of additional plant was on order at the outbreak of war, and partly ready for shipment. Also that large stocks of materials and stores were on hand and on order at the outbreak of war.

VIII. With respect to the interests of the public, witness will state reasons, by reference to documents, for believing that (1st) the cessation of local explosives manufacture would reduce rather than increase the total employment available in the Transvaal for white, and in particular for British labour (*see annexure*); (2nd) would be attended with danger to public safety, especially as the quantity to be imported would treble or quadruple the sea-borne explosives trade of the world.

In reporting upon the terribly disastrous explosion which occurred on board "Cabo Machichaco" at Santander on 3rd November, 1893, H.M. Inspectors of Explosives state there was an "enormous quantity of dynamite on board, amounting to about 1,780 cases." In connection with this significant phrase it should be borne in mind that to supply the Transvaal by importation will very soon require the arrival of a ship every day with this "enormous quantity" on board. Although only about three-quarters of the quantity exploded, the number of killed reported by the British Vice-Consul was 510. In this instance the disaster took place in consequence of fire. But that the danger to shipping is by no means limited to this is shown by the case of the "Secret," which went ashore off Troon on the 29th February, 1896, when the grinding of escaped explosives between the rocks and the hull caused an explosion. With regard to the dangers of railway transport of explosives, which in Great Britain is discouraged by a very high rate of freight and in Holland is entirely prohibited, reference may be made in the first place to the Johannesburg explosion of 1896, when great loss of life was occasioned by one train being shunted into another containing dynamite; to the explosion of a freight car loaded with dynamite when about Orville on the Pennsylvania Railway on the 9th October, 1893, and to the explosion which took place at Matadi, on the Congo Railway, in January, 1893, in consequence of a collision.

And (3rd) may lead to difficulties in keeping the market supplied, arising from laws (particularly the English Explosives Act, 1875, clause 34, and the corresponding Colonial Act) and to regulations elsewhere.

(4th) Local manufacture constantly open to Government supervision and inspection would afford a better guarantee of good quality and safety to miners' lives than would any attempt to adequately test for quality

at a boundary station or elsewhere an enormous quantity of imported explosives.

That (5th) a considerable part of the saving alleged to be obtainable by importing explosives depends on South African railway rates, which, compared with English standard rates, are at present abnormally high on the raw materials required for the company's factory, and abnormally low on imported explosives.

IX. At the beginning of this year the shareholders of the company were invited to increase the capital of the company to £900,000, by taking up at par one new share for each old share held. At the time of witness's departure from Europe, at the end of July, there had been applied for and taken up 420,395 new shares, on which calls had remained unpaid to the extent of 18s. per share on 505 shares. The European council had been authorised to place the remaining 29,604 shares to best advantage, and may have done so meantime.

Annexure to evidence of F. C. Bourne.

COST OF EXPLOSIVES USED IN MINING.

In the evidence submitted to the Industrial Commission, the cost of the explosives used in mining at that time was given as:—

	P. ton.
	s. d.
Pp. 44 & 140 Crown Reef	2 5
51 various (unnamed)	2 11½
135 Henry Nourse	4 1
136 Bonanza	1 10
137 New Modderfontein	2 2
138 Treasury	2 4
139 Wolhuter	2 5
192 Meyer & Charlton	1 6
193 Princess	4 4
199-200 Crown Reef, Henry Nourse, City and Suburban, Robinson, New Heriot, Geldenhuis.	2 10
256 Ferriera, p.t. mined, 1*s.* 9*d.*	
„ „ milled	2 7
378 Buffelsdoorn	2 8
s. d. *s. d.* 379 Eastleigh (1 10·7 plus 1 6·3) / 2	1 9

At that time the price for blasting gelatine, the principal explosives used, was 107s. 6d. per case, as against 87s. 6d. now, whereof 7s. 6d. is paid to the Government.

Leaving out the Henry Nourse and Princess, the figures for which the company can show in detail were not correctly stated, the average rate for the rest is about 2s. 4d. per ton milled.

This agrees pretty well with the detailed statement of the Simmer and Jack Mine (our largest customer) for the 18 months ending 30-6-'99, which shows that explosives cost for—

Stoping	1s. 9·15d.
Developing	0s. 9·23d.
	2s. 6·38d.

During these eighteen months the prices for four months were 107s. 6d. for blasting gelatine, and for fourteen months 97s. 6d., making an average throughout of, say, 100s., so that at the net price of 80s. which the company now gets (apart from State Royalty) the explosives cost the Simmer and Jack,

For stoping, under	1s. 5·0d.
And for developing	0s. 7·4d.

One-half of the stoping, as appears from their report, has to be done by air drills, which, as the mines state, could be avoided if the liquor and pass laws were properly administered. The report says the use of these drills adds 2s. per ton to the cost of stoping, which extra cost is largely made up of explosives.

Evidence was given (p. 266 of the Industrial Report) that air drills required twice as much dynamite per ton as hand stoping. On this basis one-third of the above costs of the Simmer and Jack can be saved under better administration, reducing the cost of explosives used in stoping to 1s. per ton milled.

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As regards developing, no details are given of excess development in the report of the Simmer and Jack, but as they ran only 200 stamps at the beginning of the period, and were preparing to run 320 at the end, it is fair to assume that the 18 months have borne more than their fair share of development. If we for this reason reduce the 7·4d. to 6d. and add the 1s. for stoping, we arive at 1s. 6d. as the average total cost of explosives used per ton milled reckoned at 80s. per case for blasting gelatine.

The costs reported to the Industrial Commission give an average as above of 2s. 4d. on the basis of 107s. 6d. per case, which would equal 1s. 8¾d. on the basis of 80s., without assuming any saving from the abandonment of air drills in stoping.

Now whether we take 1s. 6d. or 1s. 8¾d. per ton, it is obvious no possible reduction in the price of dynamite can greatly affect mining costs. The mines have bought one lot of gelatine at 44s. per case, f.o.b.; adding 12s. 6d. for charges, the cost of this lot is brought up to 56s. 6d., or 23s. 6d. below 80s., making nearly 30 per cent. less than our price, but as against this 30 per cent. has to be set the fact that imported explosives both in theory and practice lose some of their strength before arrival. If this loss be put as low as 4 per cent., it makes a much greater difference to the mines, who lose the 4 per cent. not only on the cost of explosives, but on the cost of labour and other items as well, which collectively may well represent 15 per cent. or more on the cost of explosives, thus leaving only one-half of the 30 per cent., or, say, 2¾d. or 3d. per ton as the effective saving as between the price now charged by the company and that at which the mines have made one purchase but it is not proved, on the one hand, that the mines can cover the whole requirements at so low a price, nor on the other that a satisfactory reduction could not be obtained from the company by negotiation. But even if the difference stand at 3d. per ton, that is a small charge for which to be rid of all claims for compensation and of all danger to public safety, such as would be incurred by bringing enormous quantities of explosives every day from Europe over a distance of 7,000 miles. The average yield of gold per ton is over 42s., and the fluctuations in the yield of individual mines is considerable, amounting to at least several shillings per ton. Threepence per ton is therefore a very small matter in itself, and cannot be represented as enough to determine whether any mine in the country should be worked or not, and, indeed, during the Industrial Enquiry witnesses were not even agreed whether a saving of as much as 6s. per ton would make any substantial difference in the number of mines worked (p. 132).

The theory that even a small extra burden may operate fatally in times of keen competition does not apply to gold mines, as there can be no competition in selling prices between the producers of the standard of currency.

(Mr. Rooth handed in copies of the opinions of several counsel.)

(*Chairman.*) I am not sure that we are entitled to look at these.

(*Witness.*) There is another opinion on the way from Professor Westlake, stating that in the present state of affairs the new Government is bound to take over the liabilities of the old.

2995. (*Chairman.*) What does this annexure that you hand in go to show?—To show that there is not such a burden from the existence of this concession; that the difference is entirely insignificant on the mining costs.

(*Mr. Rooth.*) I would just ask Mr. Bourne to state that the facts set forth in his statement are correct.

(*Chairman.*) It is chiefly argument.

(*Mr. Rooth.*) There are some facts.

2996. (*Mr. Ashmore.*) We have had a number of companies referred to. I want to know if I am right. There is Nobel's Company in Hamburg, then there is the Trust Company, then there is the agency of the company in Hamburg, and then there is

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this company itself, and there is, further, the old French company. Is that all of them?—No, I think there are more. I have spoken of the Anglo-German group, consisting of all the Nobel companies and the in Hamburg and several other German companies. The whole of the shares of these companies are held by the Nobel Dynamite Trust Company of London. There is a large French company in Paris manufacturing dynamite and controlling a number of factories in France, in Italy, and in Spain. It was that French company which indirectly promoted the old concessionaire company here—Lippert's company. The present company is a creation of the Anglo-German group. The present company has its head office here, but it has an office in Europe, and all the capital, I think without any exception, is held in Europe, and the great majority of the directors sit in Europe. There is a provision in the articles that the directors in Europe with such of the African directors as there may be in Europe shall constitute the European Council of Advice, and that any resolution of the European Council is to be acted upon here, and that no resolution of the board is of validity without the approval of the European Council.

2997. (*Chairman.*) Another thing you say—the ordinary rate of selling commission on explosives is 4 per cent.?—It had been in this company very much higher. I recollect that in 1892 we got it down to 4 per cent.

2998. What is the usual rate of commission in Europe?—It varies to more than 10 per cent. in places. I believe in the neighbouring colonies it is 7 or 7½ per cent.

2999. (*Mr. Curlewis.*) You may be able to tell us what commission Hosken and Co., who represented the company here formerly, got?—The arrangement we made with Hosken in August, 1892, was, I believe, 4 per cent. The previous agent had received very much more. Taking up an agency under the Explosive Act is a very troublesome affair, and you do not find people anxious to take it up. The agent has to provide magazines and to comply with the requirements of the Explosives Act, which are difficult.

3000. What is the value of your stock on hand here?

(Witness handed in a statement.)

(*Mr. Rooth.*) I believe Mr. Bourne has handed in in Cape Town copies of the directors' report, and I would like him to go through them. It will not take very long.

(*Chairman.*) We read them all.

(*Mr. Rooth.*) But there are certain facts in connection with them on which I wish to examine Mr. Bourne.

(*Chairman.*) Yes, but you need not read them again.

(Witness referred to a statement in the company's report for the year 1896 with reference to the new works completed at the factory.)

(*Chairman.*) This does not carry it any further than the statement you have already made.

3001. (*Mr. Rooth.*) Where did you get the information on which this report was based?—We got it in the weekly reports from the factory at Modderfontein after enquiry made by us. From the 1st January, 1896, the head officials held weekly meetings at the factory and reported exactly the progress made. The record of these meetings was sent to us each week, and from these records it appeared to us that the factory was ready.

3002. Are the records here?—Copies of them are here. The original book is at Modderfontein.

(*Mr. Rooth.*) These are the documents I referred to when Mr. Conrath was giving evidence.

(*Chairman.*) I cannot see how these reports can add weight to your case. If Mr. Conrath said they have the official documents he ought to have confirmed them. The fact that these gentlemen in Europe received these reports is of no importance.

(*Mr. Rooth.*) Only that these reports were made in 1897 on information received in 1896.

(*Witness.*) We had no manner of doubt whatever in Europe in November, 1896, that these factories were very well able to cover the entire current sales of the Transvaal.

3003. (*Chairman.*) How do you account for the fact that in 1897 no less than two Commissions investigated this subject, and that your agent appears to have informed the first Commission diametrically contrary to what you say, while at the second Commission no evidence was given on this point at all?—Before the Industrial Commission a long report was handed in by Mr. Alberto Philipp stating clearly that we were able to produce very much more than the 80,000 cases.

3004. (*Chairman.*) And they found against you?—I do not think the Industrial Commission found at all on the size of the factory. I have read the report through carefully, and I am not aware that in that report there was any finding of fact against us.

(*Mr. Rooth.*) We were not represented at all at that Commission.

3005. (*Mr. Ashmore.*) Your point is that the factory was large enough and contained sufficient machinery to produce as much dynamite as was required?—I think our point was this, that early in June the factory was large enough to have covered the requirements of the country, but at that time they were rapidly advancing the other department at the same time cartridging lump explosives. It would have been convenient, under ordinary circumstances, to have started on a large scale, but the chemists had their time taken up with the building, and there was no call for us to have attempted to manufacture on a large scale when we had from the Government an assurance that our time ran until November, 1896. We were very anxious to be ready in August, 1896, and to begin manufacturing on a small scale, so that we might be able to commence on a large scale in November, 1896, and that was so.

3006. (*Mr. Ashmore.*) Then the reason why you were not able to manufacture so early as you would otherwise have been was not that your staff was inexperienced, but because it was otherwise engaged?—There were various motives against manufacturing on a large scale. We do not say the risk of life is the sole motive.

3007. It is the sole motive put forward?—They were actively engaged in meeting the prospective growth. Then we were very anxious that there should be some limit placed upon the size of this factory. It appeared to us that the consumption was growing to an extent that had never been foreseen, and we were anxious that with the consent of the Volksraad there should be a limit placed upon that. The Government took the view that we were not bound to manufacture more than 80,000 cases, and we were anxious not to do anything against the wish of the Volksraad. When we found that the Volksraad insisted upon our manufacturing sufficient to meet the sales of the country, we telegraphed out on the 6th April instructing our staff—"You must manufacture a great deal more." That telegram reached here at the time the Pretoria Committee was sitting. Mr. Hoenig and the works manager were here, and they sent a telegram back—"We will do that"; and the consequence was that the production grew until in May they produced more than the whole sales of the country. That was continued from May until August, when we had a meeting of the European Council, and we said: "Now it is quite clear that the factory can manufacture without danger. The whole thing has been successfully accomplished"; and when we saw we had such large stocks we said at the end of August we will reduce our production so that we can get rid of the enormous stock on hand. By the end of December, by keeping down the production of nitro glycerine, we were able to reduce our stocks, of all of which there was a record made at the time. We were also able to reduce them next year.

3008. (*Mr. Rooth.*) Will you point out any other points in the directors' reports that you have gone into?——

(*Chairman.*) I really cannot see how these reports help. Mr. Bourne is apparently the author of those reports.

(*Witness.*) They were passed by the directors and altered by them.

3009. (*Chairman.*) But you prepared them?—Yes.

(*Chairman.*) How does the fact of his reading them add to what he has said?

(*Mr. Rooth.*) These reports were made at the time.

(*Chairman.*) He can say I refreshed my memory from the reports, which confirm what I have stated. I do not see how it can add to the weight of what he is saying.

3010. (*Mr. Rooth.*) With reference to the purchases of explosives in Europe, from whom were they made? I believe the other side lead evidence, that the company bought from Nobel's in Europe—bought from itself?—The fact is that the explosives were bought by the Government and not by the company at all. If the question includes raw material, it is true that the purchase of these is made for convenience sake through the

Nobel group. The most important article that goes into it is glycerine, and the market for it is excessively susceptible. If we had two or three purchasers in the market we would drive up the price unnecessarily, and, therefore, it is necessary that the glycerine should be purchased through one hand. The consequence is that an arrangement has been made with the trust group that they shall buy all our requirements of raw materials. They get a commission of 5 per cent. on the glycerine and the other small articles we buy, and 2½ per cent. on the nitrate of soda. We gain a very great deal in that way. We save the cost of a large staff, and we avoid driving up the price of glycerine. That is the reason that the contracts were made in that way.

3011. (*Mr. Curlewis.*) The explosives, where were they purchased?—The explosives were bought by the Government, acting through Mr. Klimke and Vorstman.

3012. From whom?—There were two groups in Europe capable of supplying them—the one the Franco-Italian and Spanish group, and the other the Anglo-German. The offer of the latter was below that of the Franco-Italian group. Evidence was led by the auditors to show that the Franco-Italian group were charging for the lump explosives a very much higher rate than Nobel's. It has not been alleged that explosives can be bought at a lower rate than Nobel's supply the Government.

3013. The 220,000 shares allocated to the new company—how were they paid for?—The 220,000 shares subscribed for by the Nobel group were paid for in actual cash, but of these 42,000 were made over to the French group at par, and subsequently 10,000. They paid for them in cash.

3014. (*Mr. Ashmore.*) Does that add to the total number of shares the French group eventually had? Did they have 300,000?—They had 52,000. They received in exchange for their holding in the old company a number corresponding to about 148,000 in the new company.

3015. (*Mr. Rooth.*) It was stated here that the local company having an office at Hamburg has no right to pay a buying commission to Nobel's for the purchase of explosives?—I believe that is covered by the answer I gave a few moments ago that if we had to undertake that we should have required a very much larger staff, with special officials, and then we should have to come into conflict with the Nobel group in purchasing glycerine, the market for which is very susceptible.

3016. (*Mr. Ashmore.*) Assuming that is so, the reason why the Dynamite Agency should keep an office in Hamburg ceases to exist?—I think the best answer to that would be the correspondence showing the multitude of matters which have to be attended to in Hamburg office. In the articles of association you will have seen that the European Council of Advice are the predominating influence in this company, and if the latter are not to be nonentities they must have a European office where they have everything at their finger ends.

3017. Surely the principal duty in Europe should have been to supply the material. What duties do they discharge except giving orders?—With regard to the erection of the factories it is for the European Council to determine what is to be built and which tenders are to be accepted. The correspondence, I am certain, would be the best answer.

3018. (*Mr. Rooth.*) The factory at Modderfontein at the time the works were completed did not immediately start manufacturing the whole requirements of the country. Are there any other reasons in addition to those you have enumerated to the Chairman?—I think I mentioned three.

3019. Did you take into consideration the third?—That, of course, was a legal justification for not making more. Whatever our motives for not covering the actual sales, we could not afford to give effect to those motives unless we were within the four corners of our contract. We were not required to cover it until November, 1896, but even if we were required to fulfil the demands before, we thought that we had only to meet the requirements, which were not the same as the sales.

3020. In other words, in manufacturing at that date you took into consideration the stock of explosives in the country?—Yes; that appeared in our correspondence constantly. We always saw that there was no danger of the stock running short until 1897. We found it necessary to show that we could meet the whole requirements, and that we did.

3021. Your manufactures were regulated by taking into consideration the stocks in the country?—We knew we had to keep a close eye on the amount voted by the Government for the importation of lumps.

3022. And the factory at Modderfontein only manufactured as much explosives as they were required to do from the head office?—There was never the least difficulty in doing that. The first definite instruction was given on 6th April, 1896, and within three weeks Mr. Hoenig covered the whole requirements of the country.

3023. Are the figures in that statement, in the handwriting of one of the clerks, correct?—So far as it would be an estimate of profit, it would be quite impossible for me to give any information upon it. I see here "General charges, £100,000." It is quite impossible for me to say that the general charges are £100,000, or what they are. I believe one usually finds in making estimates that the great danger is that one forgets to insert items, and I could not say this is correct without taking a great deal of time to consider it item by item. But if no importance is attached to it as regards profits, but only as to the apportionment of the 400,000 cases, and as having reference to the selling price and the nett manufacturing cost, then I do not think the statement is likely to be at all wrong. I wish to say that, as regards profits, it is quite impossible to say. I do not think it is at all a complete estimate. There may be many things omitted.

3024. (*Mr. Van Hulsteyn.*) I think it is erring on the other side.

(*Mr. Ashmore.*) Here is put in a probable saving in the cost of explosives of one-third. Do you think that is an unreasonable estimate?—I think the estimate must be based on the current prices for raw materials. It is quite impossible to say what the price of glycerine may be in the near future, but, given the same level of prices of raw materials, one would expect that as the rate of manufacture increases there is a gradual decrease in the cost of production.

3025. Therefore you do not see why that should not be realised?—I do not see any reason why it should not be.

3026. There is an item here of £50,000?—I do not see any justification for that.

3027. "Selling commission, 46 per cent."?—That would be right.

3028. "General charges, £100,000." What can you say about that?—I cannot say anything until I see what articles he has omitted, and then group all these items.

3029. "Depreciation for wear and tear, £50,000." Do you think that excessive or moderate?—If it is on a production of 400,000 cases, and if we can go on until the factory is worked out, it is reasonable; but if it only goes on until 1908 it is not enough.

3030. "Special depreciation, £50,000." That, I take it, is in lieu of the expiry of your lease?—If we are allowed to continue after 1908 we can extend our depreciation over a longer period; otherwise we have to write off the £50,000 in addition to the ordinary depreciation.

3031. If you were left with your lease, you would not have to write off this £50,000?—Not if we were allowed to manufacture at a sufficient profit.

3032. Supposing you were to compete in the open market with other people, with the same taxation and other privileges, would you require to write off this £50,000?—Yes, certainly, before 1908. If we had then to go and write it off, with the open market against us, I do not see where the money was to come from.

3033. You have written off more than the value of your factory already?—If you take the £50,000.

3034. Then you have this £40,000 for reserve?—I do not know anything about that. It is not mine. What we have to consider are reserves for insurance and reserves for explosion fund, because we cannot insure the whole of our factory at Modderfontein. Explosions and fires will happen, and they must be provided for by funds.

3035. Then was due diligence used in order to complete the factories in time?—According to the report, every diligence was used, and I think the letters handed in show how anxious we were to have one factory ready by the 25th April, two more in June or July,

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and the fourth ready by the end of August, and every department completed accordingly.

(*Mr. Rooth.*) I understand the Commission is satisfied that the Government, in approving the articles of association of the company, were aware of the allocation of the shares and the royalties.

(*Chairman.*) There was no fraud against the Government by the company, in our opinion.

3036. (*Mr. Rooth.*) Mr. Chamberlain, in his despatch of 1899, says 86,000 cases?—There would have been no deficiency at all had the stocks not been very large at the beginning of 1897; but because the stocks were large at the 31st August, and it required such enormous financial credits to carry these stocks and the cost of storage and magazines, we reduced the production. It could have easily been kept up.

3037. Assuming the company took no note of the stocks of explosives after the building period expired, and you manufactured a sufficient quantity for the requirements of the country, what would have become of the old stocks?—Do you mean if we kept that large stock on hand?

3038. Assuming that the requirements of the country were 200,000 cases, what would become of the others?—The stock would remain on our hands at great loss and cost of insurance.

3039. Would it deteriorate?—We would have sold it, and replaced it with new stock.

3040. (*Mr. Rooth.*) My contention is that the company at the termination of the building period were entitled to take into consideration the quantity of explosives in the country. I am referring to November, 1896, and my question is: Do stocks deteriorate? Assuming that the stock had been put in a warehouse or shed, would they have deteriorated?—Oh, certainly; but we could have sold the stocks on hand and replaced them with new stock.

3041. (*Mr. Ashmore.*) There was an explanation of those large stocks?—The importation by the Government with money voted by the Volksraad.

3042. The Government imported at your request. Why were these vast amounts imported if you knew you were going to be able to manufacture sufficient yourselves?—So long as the Government allowed us to import we would be within the four corners of our contract. The Government imported with the consent of the Volksraad, and in the event of any difficulty made by the Volksraad, it was necessary for us to cover the sales.

3043. (*Mr. Ashmore.*) We had it from Mr. Vorstmann that the orders from the Government were simply orders from himself?—They were never given except on money voted by the Government.

3044. If £100,000 was voted there was no reason why it should have been spent, unless it was to provide commission for people in Europe?—There was no commission whatever on the explosives from Europe.

3045. (*Mr. Curlewis.*) Nobels get the profit. Witness is speaking of the large stock on hand at the beginning of 1897, and Mr. Vorstmann, a director of the company or *qua* representative of the Government, managed to import 78,000 cases during 1897. And the witness talks of the immense amount of stock on hand in 1897?—The stocks were large from the very commencement. If you take the building period from October, 1893, the period would expire in April, 1896. Then came the Jameson Raid, which would bring us to at least June. The factories were completed in June. There were large stocks then. If we had been pressed then, there is no doubt we would have met all the requirements. If you had blotted out the stock on hand, and said "manufacture" there would be a danger to life. As long as we had that on hand we were safe.

3046. (*Mr. Loveday.*) If you were pressed, you had imported stock on hand to supply the demand?—If we were pressed we had only to meet current sales. Even earlier than November we had the staff and materials ready.

3047. (*Mr. Loveday.*) But you did not like to take the risk to life?—So long as we ran no risk with our contract.

(*Witness.*) I have not the detailed statement, but this is the balance sheet made up to the 31st December, 1899. The copies sent through the post have gone astray evidently.

(*Balance sheet put in.*)

3048. (*Mr. Ashmore.*) Is there any considerable sum due to you by the late Government?—At the outbreak of the war there was nothing whatever; on the contrary we would owe them the share of the profits. What happened since I do not know. I resigned on the outbreak of war.

3049. (*Chairman.*) All the English officials resigned on the outbreak of war?—Yes. A meeting was convened at Paris on the 12th October. We found when we were on the way to it that the ultimatum had been sent, and we resigned on getting there; in fact, some of them stopped in London.

3050. (*Mr. Ashmore.*) As a matter of fact, among your directors in 1899 nine were also directors of the Trust Company?—Ten I make it.

3051. And three were the local directors out here—Vorstmann, Phillip, and Wolmarans?—Four; and Karl Woolf.

3052. The total number of directors being?—Eighteen.

(*Mr. Curlewis.*) I understand the references quoted by Mr. Bourne will be put in in their entirety by Mr. Rooth.

(*Chairman.*) Yes.

(*Mr. Curlewis.*) Then it will not be necessary to ask any other questions.

(*Chairman.*) Have you any further witnesses, Mr. Rooth?

(*Mr. Rooth.*) No, but I would like to cross-examine the witnesses examined in Cape Town. I will start with Mr. Goldring.

(*Chairman.*) Mr. Goldring was not called.

(*Mr. Rooth.*) It says in the report "Mr. Goldring, as secretary, handed in the following statement."

A. R. Goldring, called; and Examined.

Mr. A. R. Goldring.

3053. (*Mr. Rooth.*) How long have you been secretary of the Chamber of Mines?—Since 1st May, 1892.

3054. I may take it that the petitions in the reports of the Chamber of Mines are correct?—Yes.

3055. The petition to the Volksraad in 1894 is here. That was handed in?—I am prepared to state generally that our petitions were correct, but if you wish to ask me with regard to a particular petition I would like to have it before me.

3056. You say in Section B of your petition of October, 1895, that the factories were completed, and that they had a producing capacity of only 80,000 cases. That is not from any personal knowledge of your own?—It is from a letter written by the company stating that they had a factory capable of producing 80,000 cases.

3057. From that you infer the producing capacity was only 80,000 cases?—Yes.

3058. You say further the monopoly has the effect of discouraging inventions?—Yes.

3059. If you refer to section 12 of the regulations you will find that the Government has the right of allowing the exploitation of inventions, and if the patentee and the Government or the company cannot agree to the conditions with regard to the royalty then these matters will be referred to arbitration?—That is so.

3060. Then I take it the patentee would not be discouraged?—He would be discouraged in this way, that practically when it was found that there was a case between the company and any other party—say the patentee of Roburite—the company could always depend on the Government, and then the patentee would be debarred—it would be needless for him to attempt to do anything wher the company was protected by the Government.

3061. Can you give any instance?—Roburite.

3062. Any other?—No.

3063. Then your statement "always" is only based on this one instance?—Yes.

3064. Can you tell what the circumstances were with

regard to Roburite?—The circumstances were these, that the patentee of Roburite got a certain quantity imported into the Transvaal. It was subsequently found that a considerable proportion of the sizes imported were unsuitable for the mines. The patentee then endeavoured to replace these unsuitable sizes with suitable ones, but could never get consent to do so.

3065. Would you say that Roburite is as good as blasting gelatine for the purpose of mining?—I am not an expert. It might or it might not be, but it was not according to our opinion, given a fair trial.

3066. Has Roburite done a trade in other countries?—I do not know.

3067. What right have you to say the attitude of the Government was a wrong one?—For the reason that the patentee of Roburite contended that this explosive was better than that then used, for certain purposes, but although we made representations to the Raad and the patentee made representations to the Government he could not get permission to send in what he considered to be suitable sizes. In other words he was baulked.

3068. Would you be surprised to hear that the present company has a certain stock of Roburite on hand that they cannot get rid of?—I would not be surprised; in fact I was under the impression that I stated that when the unsuitable sizes were brought in the Roburite representative wanted to change these for others, and these unsuitable sizes remained in the hands of the Dynamite Company.

3069. Do you know what steps the Government took to ascertain whether or not this was a suitable explosive?—I suppose they consulted the Dynamite Company.

3070. Are you prepared to say they did not consult others?—No, I am not.

3071. Your general statement with regard to the attitude of the Government is based on this one instance?—Yes, on this one instance that occurred.

3072. Then you say that dynamite No. 1 can be laid down at Johannesburg at 40s. per case, exclusive of duty. May I ask your authority?—The authorities are stated. First of all there is that report of a contract between Nobels and our companies in 1894, in which they undertook to supply dynamite to the mines so long as they got 40s. in bond, and they retained the option to sell even below that price if it suited them. But they allowed the companies to compel them to deliver in Johannesburg at 40s. in bond.

3073. You know the history of that?—Yes.

3074. And that was at the time they were fighting the monopoly?—Yes.

3075. And that was to kill the monopoly?—Yes, but it was not necessary to reserve the right to sell below 40s.

3076. Why not?—They said "You cannot compel us to deliver below 40s., but if the Government agent can deliver at a rate which would compel us to deliver below 40s. then we have the right to do so." It went to show that at 40s. there was a good profit, and that below that there might not be a good profit.

3077. Now let us get on further with that little contract. Was there no reservation as to what should happen when the monopoly was smashed?—Do you mean with regard to prices?

3078. Yes?—To the best of my recollection they were to get 62s. 6d.

3079. (*Mr. Curlewis.*) Here it is in the report of 1893?—Yes, it is 62s. 6d.

3080. (*Mr. Rooth.*) If they succeeded in getting the duty reduced they would receive half of that reduction into the bargain. You will find steamship companies doing the same thing. They will reduce rates to kill their opponents. You would hardly cite that as a fair instance of prices?—Yes, we would, because apart from that there was information that there was dynamite sold by a Belgian company in Cornwall at 30s. a case. This company was afterwards absorbed by Nobels.

3081. What was that information?—That company sent a traveller out here to take orders, and whilst he was taking orders arrangements were made under which the company was absorbed. It was selling at any rate in Cornwall, including sea-freight, at 30s. a case, and I think 40s. a case was a fair rate to sell at Johannesburg duty free.

3082. Would that company be able to supply the requirements of this country?—No; it was a small company. But it went to show at what price dynamite could be manufactured and sold to leave a fair trade profit.

3083. You have been referring to a contract made by Wernher, Beit and Co. with Nansen for 30,000 cases recently?—That is for Rhodesia.

3084. Did the Chamber of Mines not do its best to get contracts wherever it could for supplies of explosives here if the market were opened?—The chamber as chamber did not. Some of its members did.

3085. Can you mention them?—No, I cannot give any details.

3086. (*Mr. Loveday.*) That was information given to the Raad.

(*Witness.*) There is correspondence here with the Climax Company, which has been published—(part in our report for 1897, and part in the report of 1898)—in which they quoted for supplying locally. Then in connection with the Commission I wired to the Climax Company on the 3rd October, asking for current prices. I cabled to ask if they were still prepared to supply, and at what prices. My telegram asked for the current prices f.o.b. at New York, for 75 per cent. dynamite and blasting gelatine or the nearest American equivalent. The prices in their reply work out at about 54s. and something, landed in Johannesberg, for blasting gelatine. I have taken the dollar at 4s. 1d.

3087. "Blasting gelatine or the equivalent of it"—does that contain as high a percentage of nitro-glycerine as we have here?—Yes, 92 per cent. Blasting gelatine varies somewhat. It may be 91 and something, 92, and 93.

3088. Coming back to Nansen, do you know that the goldfields endeavoured to obtain a contract with Nansen, and were asked to pay 5s. a case more?—No, I have no knowledge of that.

3089. Dynamite No. 1 is very little used in this country?—It is used in some places, and for some work. I think the percentage is as high as your manager stated, that 75 per cent. or more of the explosives used on the Rand consist of blasting gelatine.

3090. What is the difference of price according to your conclusion?—I think about 8s.

3091. I see you differ from Mr. Fitzpatrick?—Mr. Quinan put in a statement on the subject.

3092. Mr. Fitzpatrick says the difference in Europe was from 14s. to 15s.?—I think he is inaccurate there, because figures were given to me which made a difference of only 8s.

3093. Are you absolutely certain they were correct?—No, but I think that is the relative difference.

3094. The contract makes a difference of 40s.?—Yes, Nobels naturally do so, because there would be a much larger consumption of blasting gelatine.

3095. Don't you think that the importation of explosives from a distance of 7,000 miles would constitute a danger to the public?—It is very difficult for me to say. I know that at the time we were endeavouring to get the concession cancelled Nobels never considered that.

3096. I have put the question very plainly. Will you oblige me by answering it?—I think the further you carry any explosive the more you are increasing the danger.

3097. And supposing there was an explosion at Port Elizabeth, and that there would be a danger that regulations would be made that would hamper the transport of explosives?—I don't think the experience of the world has shown that there would be any great difficulty. They take dynamite to Australia and all over the world, and apparently without accident.

3098. Do you know that in Europe the rate for explosives is fourteen times greater than for ordinary goods?—Yes, but consider how the lines are packed. There would not be the same danger in running dynamite over our lines.

3099. (*Mr. Ashmore.*) Are you considering the transport in the Transvaal?—You don't anticipate your factory to be obliterated?

(*Mr. Rooth.*) I do not, sir.

Mr. A. R. Goldring.

25 Oct. 1900.

(*Witness.*) In America they carry dynamite over the railways for great distances without serious risk.

3100. (*Mr. Curlewis.*) With regard to the proposed contract with Nobels, can you inform the Commission whether the mines at any time feared a threatened ring on the part of Nobels or any other of the explosive companies? Were the mines prepared to face the risk and put up the money to establish factories in this country? —The mines were always prepared to meet any ring section, and to meet it either by erecting a factory or by entering into contracts with companies outside the ring.

3101. And you have offered the Government large sums to start a factory here?—Yes, according to the offer published in our report.

(*Chairman.*) Do you want to cross-examine Mr. Fitzpatrick?

(*Mr. Rooth.*) No, I see Mr. Fitzpatrick's statement is only a tirade against the company. He expresses opinions strongly, but I look in vain for fact. I would like to have an opportunity to cross-examine Mr. Thomson.

(*Chairman.*) He is not here. He and Mr. Quinan are down in Cape Town. Mr. Thomson simply came and asked to be heard.

(*Mr. Rooth.*) I do not suppose that the Commission will attach much weight to his statements.

(*Chairman.*) As far as I am concerned I do not require you to address yourself to his arguments. Have you any further witnesses?

(*Mr. Rooth.*) No.

SIXTEENTH DAY.

GOVERNMENT BUILDINGS, PRETORIA.

Friday, 26th October, 1900.

MEMBERS OF COMMISSION:

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary.*

DYNAMITE CONCESSION (CONTINUED).

26 Oct. 1900

Mr. Rooth said: Before I commence my address, I would like to ask whether the Commission has come to any decision with reference to our request that the Commission should inspect the factory at Modderfontein.

(*Chairman.*) We should very much like to see the factory as a matter of curiosity, but I am afraid our time is very short. But if we are unable to go ourselves, Major Buckle, Royal Artillery, who has experience in these matters, will at any rate go for us, and give us a short report upon it. As far as I understand, there is no dispute at all as to the present condition of the factory or as to its capacity, or, at any rate, very little. Mr. Quinan said down at Cape Town that it was capable of producing at least 350,000 cases a year, or it might be more. It is admitted to be in first-rate condition.

(*Mr. Rooth.*) The company considers itself to be in a position to satisfy the Commission that the factory is all that it should be.

(*Chairman.*) I think we are satisfied of that at the present moment. In any case, if we did go, it would be more a visit of pleasure for us than otherwise.

(*Mr. Rooth.*) Gentlemen, the first question to which I will address myself will be the question of the validity of the contract. The contract was granted in May, 1894, in pursuance of the regulations approved by the Raad in 1893, and these refer to the contract; and I think it will be found that there are very few differences —and these only of minor importance—between the regulations and the contract. I take it, therefore, that the fact of the regulations having been approved by the Raad is of itself of sufficient authority for the Government to enter into the contract. In the session of the Volksraad for 1894 the Chamber of Mines brought all the facts in connection with this contract before the Raad. Matters were very fully discussed, and I propose to put in certain motions and resolutions presented not only during that session but also during later sessions, which I submit will prove that the Volksraad was fully aware at all times of the circumstances in connection with the contract, in connection with what was contained in the contract, and that the Volksraad always approved of it, or, at any rate, never took any resolution challenging the right of the Government to enter into the contract or ordering the Government to cancel the contract.

(Copies of Volksraad resolutions and motions handed in.)

(*Chairman.*) You start that proposition from September, 1894?

(*Mr. Rooth.*) Yes.

(*Chairman.*) You say in the first place that the variations between the contract and the regulations are insubstantial?

(*Mr. Rooth.*) Quite so.

(*Chairman.*) And in the second place you are going to rely on documents showing that in September, 1894, the Raad was cognisant of the contract, and that any variation from the regulations were condoned?

(*Mr. Rooth.*) Yes, I will put in a memorial addressed by the Chamber of Mines to the Volksraad in September, 1894. That was referred to in the cross-examination of Mr. Goldring yesterday, and I undertook to put in certain extracts from the annual reports of the Chamber of Mines. Mr. Goldring has told us that what is in the reports is correct.

(*Chairman.*) What is the date?

(*Mr. Rooth.*) There is no date on the memorial, but there is a note on the page giving the date April 26th. From this memorial you will find that all the facts in connection with this contract, all the objections that could be taken to it, are fully set forth, and I will prove to you from the Minutes of the Volksraad of 1894 that those matters were fully discussed when the Raad was requested to take steps to cancel the contract, but did not do so. (*Memorial from the Chamber of Mines put in.*)

(*Mr. Rooth.*) If you refer to the Articles of Association, you will find that the figures given in that memorial are the same as those given in the distribution of the capital. Then they ask that the Volksraad should take steps to cancel the contract.

(*Chairman.*) Wait a minute, please. They do not ask for cancellation *in toto.*

(*Mr. Rooth.*) No, but they bring forward all the facts, and suggest that the Raad take steps in the matter.

(*Mr. Curlewis.*) Or that permits should be issued to them to import.

(*Mr. Rooth.*) In point of fact, they asked for the cancellation of the contract. If you refer to the Volksraad resolutions I put before you, you will find on page 7 that Mr. Loveday, who has always been a very consistent and determined opponent of the Dynamite Company, on September 13, 1894, proposed this resolution:—

A motion by Mr. Loveday, seconded by Mr. G. de Jager, was negatived by 14 votes against 8 (Article 1,709) in the following terms: "The First Volksraad, having taken note of the memorialists and the Commission reports and the allegation of fact set forth in the memorial of the Chamber of Mines, also of the explanations and allegations of the member for Johannesberg, having taken note of the reply given by His Honour the State President, considering the desirability of enquiring into the allegations, resolves to elect a committee of five members, whose duty it shall be to investigate the accuracy of the above-mentioned allegations, and to submit a report thereon in this session of the Volksraad. The Raad further resolves to postpone the further consideration of the Government missive of the 6th September, 1894, until after the report shall have been discussed."

This motion was negatived by 14 votes against 8. Then on the following page, on the same day, the following motion was put before the Raad by Mr. Meyer, and was negatived by 15 votes against 7.

Article 1,710: "The First Volksraad, having considered the Government missive of the 6th September, 1894, with the Executive Council resolution, Article 457, and the various petitions, considering that the Volksraad does not wish to approve the contract entered into on 24th May, 1894, and does not wish to assume the responsibility for it, considering that the facilities mentioned in the Executive Council resolution asked for by the company that has to obtain the said contract, cannot agree with the Executive Council resolution, but resolves that the contracting parties shall be strictly kept to the execution of the engagements entered into by them. The Raad, in answer to the petition asking that the importation of dynamite be placed in the hands of the Government, and that the special duty on dynamite be taken off, resolves that this would be in conflict with the regulations passed at the last session, and in answer to the petitions praying that the Government may allow importation of dynamite under permits and the existing import duties, resolves that provision is made for this by Article 2 of the said regulations. The Raad resolves further to send the petitioners a copy of this resolution." 13th September, 1894.

There the issue is distinctly put before the Volksraad. It hardly seems to fit in with the first part of the resolution, because if this had been passed it would have been an absolute ratification of the contract. Then on Page 9——

(*Chairman.*) This is negatived.

(*Mr. Rooth.*) Yes. The resolution which was passed by 18 votes against 4 is as follows:—

(Article 1,711): "The First Volksraad, having considered Government missive of 6th September, 1894, now on the order, asking agreement with the Executive Council resolution (Article 457) of 6th September, 1894, submitted with the said missive, and considering the petitions and the Commission report taken thereupon, resolves not to agree with the Executive Council resolution, and not to grant the authority asked for to alter the instructions, and to charge the Government to act strictly in accordance with the regulations confirmed by the Volksraad and to reply to petitioners that their prayer cannot be granted, the matter having been decided by the Volksraad last year." 13th September, 1894.

This is the authority which was asked for by the Executive Council.

(*Chairman.*) Do you rely on this resolution which you have read?

(*Mr. Rooth.*) Not very particularly. But all these little things, taken as a whole, form, I submit, a very strong case in favour of the company with respect to the ratification of the contract by the Volksraad.

(*Chairman.*) I only want to know whether you rely upon a ratification showing a departure from the regulations. 26 Oct. 1900.

(*Mr. Rooth.*) I have not admitted any departure from the regulations.

(*Chairman.*) No, you say they are insubstantial.

(*Mr. Rooth.*) In Article 1,708, on the 14th September, 1894, the State President pointed out how impossible it was to postpone the matter as the factory had to be built. The Volksraad had only to see if the contract was not in conflict with the Volksraad resolutions. It is clear that by means of the memorial from the Chamber of Mines and through the discussions which took place in the Volksraad on that memorial, that all the facts were put before the Volksraad. That was in 1894, before they had started building the factory. Surely then was the time for the Raad to say to the Government they must alter the contract or that it is in the interest of the State that the contract should be withdrawn. The company, surely, have got the right to resist the contract being kept pending for ever. If you refer to the memorial of the Chamber of Mines you will see that the copy of the contract itself is annexed thereto. It was read in the Volksraad. I would now refer you to Page 10 of these resolutions. On 17th September, 1895, a discussion took place on the item of £400,000, on the Budget as regards Article 1,244, when it was clearly stated that the money was wanted in connection with the contract with the company. The following motion was then put before the Raad:—

"The First Volksraad resolves to postpone the item 'sale of explosives,' and to instruct the Government to lay full information before the Raad about the stipulations under which the expenditure included in this item is incurred."

This motion was negatived by 14 votes against 11. Then the following article, 1245, passed by 15 votes against 10, approves of the item "sale of explosives" unaltered. Again matters had been brought into the Raad, and it had been challenged, and the Raad had an opportunity to say to the Government they must cancel the contract, or pass a resolution themselves cancelling the contract. The next matter is an article of the Volksraad minutes, 859, of the 7th August, 1890, where the Raad, Mr. Loveday dissenting, adopted the Committee report, which was as follows:—

"The Commission, considering the many discussions on this matter which have already taken place in the First Raad, and considering Art. 7 and Art. 13 of the regulations concerned, and considering that according to Art. 6 the maximum prices are fixed for a period of eight years, cannot recommend your assembly to have the agent's right bought up by the Government in accordance with the petition of the Chamber of Mines."

Here the Raad indirectly recognised that the company has certain rights to buy.

(*Chairman.*) But they will not budge from their first position, that the company must stand by the regulations; surely if you go on, you go on at your peril?

(*Mr. Rooth.*) I submit the contrary; that the Raad, being fully aware of all the circumstances, repeatedly indirectly agreed to anything which might have been *ultra vires* of the Government under the regulations, or even any breach of the contract, had there been such, on the part of the company.

(*Chairman.*) You will not say that when a person knows of certain circumstances he must be held to approve of them. But the Raad kept repeating their attitude, and how could they repeat it in a clearer way than by saying that they adhered to the regulations?

(*Mr. Rooth.*) Then in 1896, in the debate on the items "sale of explosives, £600,000," which item was passed unaltered, after Mr. Loveday, a member of the Budget Commission, had reported, we read in Article 1293 that:—

"The Budget Commission had asked the Government Agent when the factory would be ready, and received for answer, the 6th November in this year, but not in full working order before the end of this year, although the contract, according to the Volksraal resolution concerned, had expired on the 25th of April last." Here again the matter was clearly before the Raad, on the 1st September, 1896, and they approved. I would now refer to the Explosives Law, Law 27, of 1896, page 14, and sections 7 and 32:

"On the 1st of September, 1896, the Explosives Bill

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was submitted to the Raad, which was then submitted to a committee, which reported on the 24th December, 1896, art. 1900: 'The Bill, as settled by the Committee, was discussed by the Volksraad on the 4th November, 1896, and following days, and as passed, contains the following provisions in clauses 7 and 32, viz., that in Art. 7 every case of explosives must bear the factory mark of the Government's agents, except explosives imported by the Government, and in clause 32, the Government is authorised, after hearing the railway manager and the Government agent for explosives, to regulate and limit transport in certain special places. Again, Art. 69—persons or bodies being either the Government agent or appointed by him for the retail sale of powder and other explosives may keep up to 200 lbs. of powder and one case of dynamite in their store.'"

This law was passed on 1st September, 1896. Then on the 4th February, 1897, page 15, there were several motions on this everlasting topic, one of them in the following terms:—Art. 45: "The First Volksraad, considering the item, sale of explosives, now on the order, considering that the time fixed in the contract with the Government agent for the erection of a factory, viz., 2½ years, has expired but that the factory is not yet in a position to supply the quantities of explosives required in this country as stipulated in Art. 10 of the regulations (Art. 6 of the contract) so that it is necessary to import dynamite, approved the item on the order, but resolves that the importation of the deficiency of explosives shall take place by the Government, and for the benefit of the Treasury of the South African Republic. The Raad further resolves to instruct the Government to submit a full report upon the carrying out of the regulations for the next session of the Raad. This motion was negatived by 16 votes against 10. Another motion was in the following terms: also Art. 45., 'The First Volksraad, considering the item sale of explosives £500,000 now under consideration and further considering the explanations given on behalf of the Government regarding the completion of the factories for the manufacture of dynamite, resolves to instruct the Government to submit at the May session a full report to the Raad considering the completion and working of the stipulated factories, to approve the item on the understanding that on all materials imported and sold through the Government agent the latter shall pay import duties as stipulated by Art. 2 of the regulations. This motion was negatived by 17 votes against 9.'"

"Ultimately the Volksraad passed in February, 1897, the folowing Art. 46:—The First Volksraad, considering the item, 'sale of explosives,' £500,000, now on the order, having considered the explanations of the State President and State Secretary resolves to postpone the said item and to appoint a Committee of three members instructed to investigate the matters in connection therewith, and to submit a report with recommendations relating thereto to the Raad at this session as speedily as possible in order that a decision may then be taken thereon."

There is the following article on page 17, on the 4th November, 1897:—

"The First Volksraad, considering chapter 7, dynamite, etc., with the various memorials relating thereto, now on the order, being of the opinion that in the execution of the contract between the Hon. Government and Mr. L. G. Vorstman, contracting party of the other part has not complied with all the obligations imposed by the contract, considering it further necessary, that these questions be speedily settled by a competent authority and finally considering that this contract has been made and entered into by virtue of approved regulations between two contracting parties, and it is out of the sphere of the Legislative Power to take a final decision in this connection, this falling within the sphere of the competent judge.

"Resolves to instruct the Executive Council, immediately after having obtained legal advice from the State Attorney and other jurists as they may think necessary, to have it decided by a competent court whether the contracting party of the other part has complied with all his obligations imposed upon him by contract, and in case this decision be to the advantage of the Hon. Government then to take immediately the necessary steps to get the contract altered to the advantage of the State, also that the ammunition trade must remain exclusively in the hands of the Hon Government, as also to further meet the mining industry by lowering the sale price of explosives and then to demand from him the still unpaid moneys as contemplated in Article 12 of the report.

"And in case it might appear from the aforementioned decision that Mr. Vorstman has not properly furthered the interests of the Government then to appoint somebody else in his stead as its representative in the Board of Management. And, finally, the Raad resolves to accept this chapter for notice and agrees with the proposals of the Commission made under Art. 4, division (d) 13 and 14."

This proposition was made by two of the supporters of the dynamite monopoly, and both of them voted for the resolution, which was subsequently passed. This was also negatived. I am sorry to trouble you with so many negatived motions, but I think it is necessary for my purpose. The following, dated 4th November, 1897, was also negatived by 15 against 12 votes:—

Art. 1655. Amendment Dieperink van Wyk of motion Vorster J. Meyer.

The Hon. First Volksraad, considering chapter VII. of the Commission report now on the order, considering the memorials in connection with this matter, considering that from a former Commission appointed from this hon. body, it appeared that the legal position of the Government as against the contracting parties is undoubtedly strong, considering the Hon. Government has given the matter into the hands of legal advisers, who have handed in their report to the Hon. Government, resolves to instruct the Hon. Executive Council to at once instruct the said legal advisers to immediately take the necessary steps, and to act in accordance with their advice as handed in; that in the meantime and until the matter shall have been decided by the High Court, the Government be instructed to issue permits for the importation of dynamite and other explosives to persons for own use, under a special import duty of 20s. per case of 50lbs. weight, without prejudice to the case, permits to be issued from time to time for a stock of three months."

Here is another one negatived on the same date,

Article 1655, dated 4th of November, 1897. Motion Vorster J. Meyer, negatived, with 19 votes against 8.

"The First Volksraad, considering the report of the Volksraad Commission, chapter Dynamite, and the memorials in connection therewith, now on the order; considering the necessity of the supply of cheaper dynamite to the mines in the South African Republic, also the necessity as regards the importation and purchase of all kinds of firearms and ammunition to be exclusively in the hands of the Hon. Government, being of opinion that such is not the case, as, in their opinion, the Dynamite Company of the South African Republic has not complied with the strict conditions and stipulations of the contract between it and the Government of the South African Republic, in accordance with the regulations of the State Monopoly in that respect, as regards the writings off, etc:; the Raad being further of opinion that whereas it is a contract existing between two parties, the legal question of it must be decided by the High Court of the South African Republic, resolves, *primo*, to charge the Executive Council, immediately after having obtained information from legal and technical advisers (on that subject), to have the matter relative to the non-compliance with the prescribed conditions of the contract, the difference of the writings-off, and all other questions in accordance with the regulations here contemplated brought before the High Court of the South African Republic, in order to have this decided by that body or by a court of arbitration, the umpire of which will be pointed out by the Chief Justice, in case parties cannot agree; *secundo*, after the decision, if in favour of the State, the Executive Council will take this contract in their own hands, and make such alterations as possible for the cheap supply of all kinds of explosives to and required for mining industries in the South African Republic, and to lay this modified contract before the First Volksraad for approval during its next yearly session; *tertio*, the explosives purchased by the Hon. Government and placed at the disposal of this company for the manufacture of dynamite, etc., shall, pending this question, be supplied to the mining companies as follows:—Dynamite No. 1 at £3 10s. a case of 50lbs., and blasting gelatine at £4 a case of 50lbs., without prejudice to the right of contracting parties to demand damages if entitled thereto. The Raad further resolves to accept this chapter "Dynamite" now on the order for notice, and send memorialists a copy of this resolution."

Here is one that was not negatived.

(*Chairman.*) What is the date?

(*Mr. Rooth.*) It is article 1656, on the 4th November, 1897.

Article 1656. 4th November, 1897. The following motion was carried by 14 against 13:—

"The First Volksraad, having considered part 7 of the report of the Commission *re* dynamite and explosives now under discussion, and the petitions connected therewith; further considering that with regard to this matter a contract has been made by the Government with L. G. Vorstman, and considering the report of the Commission and the explanations and facts brought forward by various members, that the company has not strictly acted according to the contract, resolves to instruct the Executive Council to put this matter in the hands of the State Attorney and other lawyers for the purpose of finding out what steps can be taken in it, and then to act according to circumstances, with the object of providing the mines with cheaper dynamite, either by allowing importation under permits, subject to the payment of the usual import duties, or otherwise, as the Executive Council thinks fit."

(*Chairman.*) Is that the Industrial Commission report?

(*Mr. Rooth.*) No; this is the Volksraad Commission's report. Here the Government receives a mandate from the Volksraad to act according to circumstances, with the object of providing the mines with cheaper dynamite, either by importation or otherwise, as the Executive may deem fit—a pretty full power of attorney.

3730. (*Mr. Loveday.*) How do you translate the resolution giving the Government power to act "according to circumstances"?

(*Mr. Rooth.*) That is as matters may be found to exist by the Government. It does not give the power to the lawyers; neither does it bind the Government to act on the advice.

(*Mr. Loveday.*) No; but the Raad sends the Government to the lawyers to find out how things stand, and then to act according as they find the case.

(*Mr. Rooth.*) I contend that there is nothing in the resolution that compels the Government to act upon the opinion of those legal advisers. The Government is instructed to take legal advice and act upon the circumstances.

(*Chairman.*) That depends upon the translation. The difference is very clear. It is quite reasonable that the lawyers should be consulted, and that they should point out what the law is, and then put it to the discussion of the Government. There ought not to be two opinions about this advice.

(*Mr. Rooth.*) I would ask my friend Mr. Curlewis to translate it. I hold that there is no liability on the Government that they should act as the lawyers advises them. Further there was a difference of opinion on the part of the lawyers.

(*Mr. Loveday.*) First of all the opinion of three or four lawyers was taken, and they all agreed, and afterwards the opinion of Mr. Smuts was taken as against their opinion.

(*Mr. Curlewis.*) When that was referred to the State Attorney and other counsel the State Attorney was Mr. Gregorowski, and after counsel had advised in the case he became acting chief justice, and Mr. Smuts was appointed State Attorney, and the Government afresh got an opinion from Mr. Smuts.

(*Mr. Rooth.*) I am instructed that Mr. Gregorowski, while State Attorney, never gave a written opinion.

(*Mr. Curlewis.*) That is not quite correct.

(*Mr. Rooth.*) Discussion with colleagues does not confirm opinions.

(*Chairman.*) What do you say, Mr. Curlewis, as to this translation?

(*Mr. Curlewis.*) "To put the matter in the hands of counsel to find out what steps can be taken in this matter, and then to act in accordance as circumstances are found." I take it that the logical result would be: "Find out what counsel's advice is and act accordingly."

(*Mr. Rooth.*) Imagine the position of the poor Government getting opinions that do not agree! 26 Oct. 1900

(*Mr. Curlewis.*) Then of course they do not "act accordingly."

(*Mr. Loveday.*) You know, Mr. Rooth, that all the opinions did agree, and that it was only subsequently a difference was imported into the matter.

(*Mr. Rooth.*) I do not know, and I am instructed that Mr. Gregorowski never gave an opinion.

(*Mr. Loveday.*) We were informed that Mr. Gregorowski agreed with it, although he did not give an opinion.

(*Mr. Curlewis.*) As a matter of fact, Mr. Gregorowski gave what he calls a provisional opinion, and afterwards these other opinions were submitted to him.

(*Mr. Rooth.*) I take the statement of Mr. Loveday that Mr. Gregorowski gave no opinion. When he resigned a new State Attorney was appointed, and he gave an opinion against the others—an opinion which I can tell you is not at all singular.

(*Mr. Ashmore.*) Do you not admit that there were three or four opinions?

(*Mr. Rooth.*) Three were given.

(*Mr. Ashmore.*) Two were against you and the third was in your favour? Why did the Government go on until it got an opinion in the company's favour if it was not bound to take the opinion of counsel?

(*Mr. Rooth.*) The Government is bound always to get the opinion of their legal adviser. Mr. Gregorowski, as we have been informed by Mr. Loveday, and it is my information too, never gave an opinion, and therefore when the new State Attorney came in he gave an opinion.

(*Mr. Loveday.*) The only opinions the Raad had before it were the opinions of Mr. Schreiner, Mr. Reitz, and Mr. Curlewis, and afterwards a fourth opinion was brought in to upset the three.

(*Mr. Rooth.*) I have never seen Mr. Schreiner's opinion, and it has never been published.

(*Chairman.*) Yes, in a blue-book.

(*Mr. Rooth.*) I can hardly be surprised at the Government having thought it necessary to take further opinion because Mr. Curlewis himself was not unreservedly in favour of the Government. There was the poor Government. Mr. Curlewis was in favour of it in one half of his opinion, and on the other hand against it.

(*Chairman.*) Mr. Curlewis was not much in favour of the Government anywhere.

(*Mr. Rooth.*) On one very important point he is certainly against them, and the Government no doubt thought the new State Attorney might also be like Mr. Curlewis, and he also gave a contrary opinion. I don't think it is necessary to take up the time of the Commission with these matters as you say you know the opinions. My attention has just been drawn to the fact that the resolution of 4th February states explicitly that the Raad resolved to put the matter in the hands of the State Attorney. The gentleman who was State Attorney when this was passed never gave an opinion.

(*Mr. Loveday.*) Are you certain he never gave an opinion to the Government?

(*Mr. Rooth.*) You stated so.

(*Mr. Loveday.*) He never gave a written opinion.

(*Mr. Rooth.*) I say the Government would be bound to take a written opinion.

(*Chairman.*) I understand your point is that the Government was instructed to take the opinion of the State Attorney, and that the only opinion of the State Attorney is the opinion of Mr. Smuts, which was in your favour. And you contend that the discretion was left to the Government, although there were three opinions against the State Attorney, to act in accordance with the opinion of the State Attorney?

(*Mr. Rooth.*) I call it two-and-a-half opinions, because Mr. Curlewis was half in our favour. I submit the matter was very doubtful, and that the wording of the resolution meant that the State Attorney should give his opinion in writing.

(*Chairman.*) Governments are advised on many matters orally by their lawyers.

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(*Mr. Rooth.*) I say it is not proved that Mr. Gregorowski ever gave an opinion, and I say that if there is such an opinion the other side should produce it. I submit that from the wording of this resolution the matter was left to the discretion of the Government, after having taken their opinion, to act as the Government thought fit. It would be absurd to maintain the contrary, because in the particular case in point we find that the opinions did not agree. The Government acted as they thought fit, and if you refer to pages 49 and 50 you will find what the Government did.

Pretoria, 26th April, 1898.

To the State Secretary, Pretoria.

Sir,—I have the honour to repeat hereby my promise made this morning to his Excellency the State President upon his request that my company should reduce the price of dynamite, etc., by 5s. per case from the 1st May.

It must, however, be expressly understood that this reduction takes place strictly in accordance with the contents of my letter of the 7th October, 1897.—I have the honour to be, Sir, your obedient servant,

(Signed) L. G. VORSTMAN.

De Zuid Afrikaansche Fabrieken voor Ontplofbare Stoffen, Beperkt.

Translation.

Resolution of Executive Council, Art. 456, dated 26th April, 1898.

On the order Minute R. 4504-98 (U.V.R. 423-98), and in connection therewith the consideration of an offer by Mr. L. G. Vorstman, on behalf of De Zuid Afrikaansche Fabrieken voor Ontplofbare Stoffen, Beperkt, to make and publish at once a reduction in the selling price of dynamite of 5s. sterling per case.

The Executive Council, considering the letters on this subject from Mr. L. G. Vorstman, aforesaid, of the 7th October, 1897, and 26th April, 1898, respectively,

Considering the Committee Report of the First Volksraad on the subject,

Wishing to meet the mining industry as much as possible,

Resolves:—

That pending further decision the State shall not claim its 5s. per case in order that De Zuid Afrikaansche Fabrieken voor Ontplofbare Stoffen, Beperkt, may be put in a position to immediately reduce the price of dynamite by 10s. sterling per case.

To recapitulate with regard to this resolution, I say the Volksraad instructed the Government to act as they thought fit; they gave the Government practically *carte blanche*, and the Government then went and made a further contract with the company for a reduction of the price chargeable by the company under the contract. The next resolution I wish to refer to is on page 21, Article 1,738, 15th November, 1898, *re* petition Chamber of Mines cancellation dynamite contract.

The petition was referred to a Commission, whose report, dated 27th August, came before the Volksraad. It was worded as follows:—

"Two petitions with 35 signatures were presented to your House respectively by the Chamber of Commerce and the Chamber of Mines, Johannesberg, asking, if possible, that the contract with the Zuid Afrikaansche Fabrieken voor Ontplofbare Stoffen, Beperkt, be cancelled, or that relief be otherwise given to the mining industry with regard to the price or the importation of explosives.

"From information received it appears to your Committee that the report of the legal advisers, whose duty it was to make an investigation into the working of the State dynamite monopoly, in connection with the aforesaid contract, has been handed in to the Executive Council, and is still being considered by that body, while the Government is still negotiating with the Explosives Company to get the price of explosives, which has been already reduced, further reduced for the benefit of the industry, for which reason your Commission cannot recommend your House to grant consideration to the prayer of the petitioners before this matter in connection with the aforesaid report be entirely disposed of, and the Committee suggests that a reply should be sent to the petitioners to this effect.

And on Page 22, Article 1739, 15th November, 1898:—

Article 1739 of 15th November, 1898:

The First Volksraad, having regard to the memorial with Memorial Commission Report, now on the order,

(*i.e.*) Report of Commission on Petition Chambers of Mines and Commerce, praying for cancellation of dynamite contract (see preceding art.),

Resolves to approve of the Memorial Commission report.

From this it appears that the Volksraad is informed the Government is negotiating with the company for a further reduction in prices. The next is Article 308, dated 14th March, 1899:—

Debate *re* decrease price of dynamite. At the end of the debate three motions were submitted. One of these brought in by Mr. L. Meyer, and seconded by Mr. Dieperink, opponents of the concession, was in the following terms: "The First Volksraad, considering Government missive of 13th March, 1899, now under discussion with draft proposal from the Dynamite Company, in connection therewith, resolves 'Not to agree with the said proposal, and resolves further to instruct the Government to find out from the Dynamite Company upon what terms and conditions and at what price they would be willing to transfer their factory with all belongings to the state, and to submit a report thereon at next ordinary session of the Volksraad.'" This motion was negatived by 15 votes against 13.

That is a motion which was negatived. There they wanted to buy the company out.

(*Mr. Ashmore.*) Is it gravely contended that the fact that you refuse to purchase a right is evidence that that right exists?

(*Mr. Rooth.*) If a person seriously discusses the question of the purchasing of a right, I think it is pretty strong evidence that it never entered his mind to question the existence of the right. I hold that the discussion is *primâ facie* evidence that the right exists.

(*Chairman.*) You see the Raad, I think with great justice, doubted its legal capacity, but it stood upon its resolutions, on its regulations.

(*Mr. Rooth.*) There, with respect, I differ.

(*Chairman.*) You endeavoured to get out that from time to time it referred it to lawyers.

(*Mr. Rooth.*) With all deference, that does not appear from the resolution which we were discussing now. The Government are bound to act. In my mind the wording is perfectly clear. Then there is a letter from the Government, dated 25th July, 1899, stating that the Government has agreed with the company that the price of dynamite shall be lowered. Then on the 27th July, 1899, Article 615, there is the following:—

"The First Volksraad having considered the Government missive of the 26th July last, enclosing a proposal for the amendment of the dynamite contract, having considered the various legal opinions and the memorials relating thereto, resolves to elect a Commission of five members, with instructions to go into the said documents and all other documents relating thereto in conjunction with the Government, and to draft a proposal that shall lead to the final settlement of the dynamite question. On the 17th of August two reports were submitted by this Commission, of which the minority report was only signed by Mr. Dieperink. The discussion closed on the 25th of August."

Then on page 27, Article 959, we have the resolution:—

Article 959, 27th August, 1899.—The First Volksraad, having considered the majority and minority report *re* dynamite, now on the order, considering that according to the majority report the requirements of the mines are met by the prices of explosives being lowered, and that the revenues of the state will benefit thereby to a considerable extent, resolves to approve the majority report, with the recommendations contained therein, and instructs the Government to carry it out as soon as possible. In this connection one motion was handed in proposing that the matter be referred to the High Court, which was rejected by 18 votes against 9; and another motion proposing to refer the matter to the public, and to finally settle it at the next session. This was negatived by 18 votes against 9, the above being finally carried.

(*Chairman.*) That is on 27th August.

(*Mr. Rooth.*) That is the resolution on which the contract of the 20th December, 1899, was based. Now there is one further point on this head which I wish to bring before you. I have made out a memorandum of the royalties approved of by the Volksraad, and which appear in the annual budgets submitted to that body:—

Memo. *re* royalties approved by Volksraad, and which appeared in annual budget submitted to that body.—(1) Royalty (Staatsrechten) on sale of dynamite, £25,000, for 1895, approved Article 1246. (The item purchase of explosives, £400,000, was discussed Article 1413 on 1st of October, 1895, and approved without division.) (2) Royalty on sale of dynamite, £35,000, approved Article 1296, 1st of September, 1896. (3) Royalty on sale of dynamite, £50,000, approved Article 32, 2nd February, 1897. (4) Royalty on sale of dynamite, £75,000, approved Article 63, 1898. (5) Royalty on sale of dynamite, £31,250, approved Article 40, 20th February, 1899. (This amount is solely 20 per cent. of the company's profits for the year.)

(*Chairman.*) That is the royalty paid to the Government?

(*Mr. Rooth.*) The royalty payable to the Government under the contract.

(*Mr. Ashmore.*) Your point is that the Government accepted the royalty paid under the contract, and did not demand the royalty payable under the regulations.

(*Mr. Rooth.*) No. With regard to this my point is that the Government annually received certain royalties from the company, reported the receipt of those royalties to the Volksraad, and that the Volksraad annually approved of them. The Raad did not say: "You have no right to receive those because the contract is invalid."

(*Chairman.*) You mean that these royalties are royalties that were payable under the contract, and that therefore, in receiving them the Raad confirmed the contract?

(*Mr. Rooth.*) The Government annually reported to the Raad that they had been receiving royalties.

(*Mr. Ashmore.*) You must remember that under the regulations an even higher royalty was receivable.

(*Chairman.*) Do you say these royalties were earmarked in the Budgets submitted to the Raad?

(*Mr. Rooth.*) Yes. Here it is in the Volksraad estimates for 1897: "State right royalty on dynamite."

(*Chairman.*) It is a receipt among an enormous quantity of receipts, and it is ambiguous whether that is a receipt under the contract.

(*Mr. Rooth.*) Here is another one.

(*Mr. Loveday.*) It was money advanced for the purchase of explosives?

(*Mr. Rooth.*) No. These are royalties. I may state that these things are not passed in lump. They are voted on, each article.

(*Chairman.*) You mean that a vote is taken on each receipt in that list?

(*Mr. Rooth.*) On all the more important ones. It might be argued that they might pass the batch.

(*Chairman.*) Before you trouble about that, don't you think you had better get the next link, because it is ambiguous whether the royalty had been received in reference to the regulations or the contract?

(*Mr. Rooth.*) Under the regulations there is nothing due. It is only under the contract that the royalty is due.

(*Chairman.*) That is true, but the contract is made pursuant to the regulations. It is ambiguous whether the payment is made pursuant to the regulations or not.

(*Mr. Rooth.*) (*Reading from the Raad Estimates.*) "The item, 'Royalty on sale of dynamite' came on the order." There you see a specific item brought on.

(*Mr. Ashmore.*) This is only an estimate of revenue.

(*Mr. Rooth.*) I submit on this point that I have clearly proved that the Raad over and over again, both expressly and tacitly, recognised the contract, expressly especially with regard to the besluit of August, 1899, where the Government were authorised to contract with the company for a reduction in prices of the contract of May, 1894; and I think I need not take up your time by arguing that where the Volksraad authorised the Government to contract with the company, the Raad thereby expressly approved of the action of the Government, and any breaches or alleged breaches which may have been committed before that date. That being so, this Government could never appear in any court of law to claim the cancellation of this contract, and I claim that the British Government, coming in its place, is equally bound with regard to this resolution and all these obligations, as the Transvaal Government would be. The next point in connection with the contract is whether the contract itself was *ipso facto* void by reason of any breach that the company may have committed. Section 15G of the regulations provides that if the agents fail to carry out any of the conditions of the contract, then the Government may cancel the contract. Section 15 commences, "The Government shall expressly reserve——

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(*Chairman.*) That is Mr. Smuts' opinion.

(*Mr. Rooth.*) Yes; but that is also the opinion of various lawyers. The contention of the company is that that resolution is directory only, that the Government was not bound to cancel the contract, and that if it be cancelled it is too late now.

(*Chairman.*) The note of the Government to the Raad shows, I think, that such a discretion must be exercised in common sense and reason by the Executive.

(*Mr. Rooth.*) I believe the opinion of Mr. Curlewis is that the contract *ipso facto* became void.

(*Chairman.*) The argument against you is that the regulations are fundamental on certain points. That is the opinion of Mr. Curlewis and Mr. Schreiner.

(*Mr. Rooth.*) With regard to the opinions put in by us it will be unnecessary for me to go through these. The Commission, I presume, will read them.

(*Chairman.*) I will read them as a matter of curiosity, but I don't know whether opinions submitted without the case stated are matters which can bear on the report.

(*Mr. Rooth.*) Where a case of abstract law is concerned?

(*Chairman.*) You may take it that they will be considered.

(*Mr. Rooth.*) The company has repeatedly since 1896 changed its position, and has spent practically a million on the factory, and it is too late now to go back to any alleged breach committed years ago. It was the duty of the Government to have given us notice of cancellation, and up to this day we have not received that. Under Roman Dutch law, when a person claims to cancel a contract, he must give the other party notice, and in our case such notice was not given. If you refer to the contract you will find that it stipulates that the Government shall give the company six weeks' notice with reference to any breach. The Government, in entering into the contract, undertook to give the company six weeks' notice in the event of any breach of the contract, within which six weeks the company would be in a position to put right things which may have been wrong. Such a notice has never been given to us, and notice of cancellation has not been given. Suppose this contract had run a period of 15 or 20 years, could the Government hark back on breaches committed at the very commencement of the contract? I now come to the question as to whether the contract was a breach of the London Convention.

(*Chairman.*) Before you come to that, what do you say to this: By the regulations, 15a, the Government "shall reserve to itself the right to withdraw the agency for the manufacture of explosives, should the interests of the State require it?" Then I see article 12 of the contract stipulates: "Should the Government avail itself of Article 15a of the regulations, it shall be bound to buy the explosives required from the agent, the cost of trade deducted." Does not that render Article 15a purely illusory?

(*Mr. Rooth.*) No. Section 15a refers to the agency for trading in powder, cartridges, etc.

(*Chairman.*) No. It says the manufacture of dynamite.

(*Mr. Rooth.*) With all respect, you have got a wrong translation. It is only the agency for trading.

(*Chairman.*) Let us take it for a moment that it is the agency for trading. How is that article consistent with Article 12, which says that you are bound to buy the explosives from the agent in terms of this contract? What is the use of being able to withdraw the contract

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if you have to buy from the agency whose right you have withdrawn?

(*Mr. Rooth.*) The agency for the manufacture the Government could never withdraw except for a breach of the contract; but with regard to the agency for trading, that they could withdraw, because that is separate.

(*Chairman.*) Assuming for a moment that you are right, and that the word means trading, what is the use of the power to withdraw in the interests of the State the right to trade when the Government is bound to buy all the explosives from the agent whose agency is withdrawn? How can you say that in face of that the terms of Article 15a are not purely illusory?

(*Mr. Ashmore.*) The only effect would be to deprive Mr. Vorstmann of one of his aliases.

(*Mr. Rooth.*) With regard to trading, the Government can appoint anyone they like, whereas the manufacturing must continue under the contract.

(*Chairman.*) But they have got to buy it from the person whose trading right the Raad has instructed them to withdraw. I mention that amongst others, because Mr. Max Philipp was astute enough to see the great advantages that Article 12 gave him. Then I would draw your attention to another matter. Clause 10b of the contract reads: "No explosive material of any nature whatsoever can be imported by the agent except under the provisions of Article 2." That means general importation, doesn't it?

(*Mr. Rooth.*) Yes.

(*Chairman.*) Did the Government forbid importation by everyone else except you.

(*Mr. Ashmore.*) They went further than that, because the Government purported to carry on all these importations itself.

(*Chairman.*) Yes, colourably.

(*Mr. Rooth.*) I wish the Commission would hear me before you decide as to whether it was colourable.

(*Chairman.*) Certainly. If the Government absolutely prohibited everyone else you are in some difficulty in regard to the Convention.

(*Mr. Rooth.*) I submit not, because under the London Convention, the object of clauses 13 and 14 is to prevent discrimination between British subjects and the citizens of any other country; and when the State says it will make a certain matter a State monopoly, how can there be said to be any discrimination between the citizens of one State and those of another? When the State makes a matter a monopoly there can be no question whatever of a breach of the London Convention. The State having the right then to say that the trade in a certain article shall be a monopoly, it has also the right to appoint an agent to carry on that trade, because it cannot be expected that the President and the Executive Council shall do so themselves. The mere fact that the British Government have never, until 1899, taken any steps to protest against or to object to this monopoly is, I think, very strong proof that that Government did not consider it a breach of the Convention. As long ago as 1887 a monopoly for explosives was granted by this Government; another one was granted in 1892; and all this time the British Government did not object. I have put in a letter bearing date 26th October, 1893, the day after the first contract was entered into, from the State Secretary to the British agent at Pretoria.

(*Chairman.*) I don't think you need trouble yourself to argue that a *bonâ fide* monopoly, granted in the interests of the State, by the late Transvaal Government, is a breach of the Convention. That line has not been taken by anybody.

(*Mr. Rooth.*) That opinion is the opinion of the most eminent lawyers. The question as to whether it is technically a breach of the Convention need not be considered then?

(*Chairman.*) *Bonâ fide* monopoly is the word.

(*Mr. Rooth.*) The monopoly itself was *bonâ fide* enough.

(*Chairman.*) Was it? The object for which they originally granted the monopoly can be clearly gathered from the contents of the documents, and it was admitted that they wished to grant the full control to the State, so that it should be self-contained. It does not appear how that is to be done by a contract which binds you hand and foot to Nobel's people in Germany. It does not manufacture at all for many years, and it never employs the products of the State.

(*Mr. Rooth.*) I propose when I come to the question as how the monopoly was carried out to try to satisfy you, and I hope to be able to do so, that the company was not as culpable as the Commission seems to think. There is this other point, namely, whether the approval of the Government to the allocation of shares and the Royalties, in the articles of association, was ultra vires or not. It has been clearly proved before this Commission that prior to the granting of the present Concession there had been a former dynamite Concession with respect to which the Government gave notice of cancellation to its holders. The holders were the French Company. They did not agree to the cancellation of the monopoly, but claimed the right to go to arbitration. The French Consul sent in a vigorous protest on behalf of his Government against the cancellation, and it was then decided that the matter should be referred to arbitration. Pending the decision of the arbitration negotiations appear to have gone on, with the result that the regulations of September, 1893, were passed, and the Government gave a new contract to Mr. Vorstmann on the understanding that he was to give it to the new company. On that point I wish to refer you to the letter of the 23rd October, 1893.

(*Chairman.*) I do not think you need trouble yourself about that proposition. We are all quite satisfied that the Government knew perfectly well that the company was going to be formed upon the basis of treating the cancelled contract with the French Company.

(*Mr. Rooth.*) On the question of *ultra vires* do you wish to hear me?

(*Chairman.*) The question is whether the Government had power to do it.

(*Mr. Rooth.*) With regard to that I say that the Government as a Government has a perfect right to settle any claim which may be made against the State. The Government is more than an ordinary agent. It is an agent with the fullest powers, and if an action at law has to be instituted or defended it is not necessary to run to the Volksraad for permission. If the Government wishes to submit the matter to arbitration it can do so, and bind the State. If the Government wishes to promise a thing and bind the State it can do so. How do we know that damages running into millions would not have been given against the Government? The Government was informed at the time that its case was a weak one, and throughout the whole of the negotiations it appears that the desire of the Government was to settle the matter. The Government had a right to pay these shareholders a sum in consideration of the cancellation of their claim. Supposing the Government had paid the old shareholders £182,000 in cash in 1894, and an action had been instituted against those people for a refund of the money? I say the Government had a perfect right when there was a matter in dispute between it and anybody else, to compromise it without special sanction of the Volksraad.

(*Chairman.*) You take it that the original regulations are binding? Now, where is the authority within the four corners of the regulations to form a company and to grant it a monopoly, and to form it on the basis of an enormous indebtedness to the old company, whose contract the Raad had cancelled? I am assuming that the Government thought there was a genuine case on the part of the French Company, and that it might be brought into difficulty. Where is the authority under these regulations and resolutions for the company to be formed weighted with this heavy claim? I only see the power to the Government to transfer the agency to an agent, not to transfer it burdened with a number of claims.

(*Mr. Rooth.*) That would be so if we were under the subsequent Raad regulations. But we stand or fall by the regulations of 1893. That would be a very strong argument, but we must take what has occurred since. I wish to satisfy the Commission with the actions of the Government. Perhaps it might at the time have been irregular; perhaps it would have been better for them to say "we will make a settlement with the old shareholders apart from the new company," but the Government amalgamated the whole thing. We are not now in a position to say whether the Government in agreeing to the allocation of those shares in respect of claims and royalties, made a good bargain or not; not only so, but we have no power to go back upon it.

(*Chairman.*) Take it that they had a formidable case against them, and that it was better to have no trouble with the French Government; assuming that in your favour, how does it make this contract in compliance with the Raad regulations, because this is the fundamental document you have got to act under? The Government as a Government might have been acting from its own point of view quite sensibly; but it does not show us that they had the power to act in that way. The Raad said "only in this way will you grant this right with its immense profits."

(*Mr. Rooth.*) If the Raad had only said that in September, 1894, then perhaps this question would not have arisen. I contend that the Raad confirmed and agreed not only to the 182,000 shares, but also to the royalty, and everything that was done in connection with the flotation of the company.

(*Chairman.*) Your argument is that the Government did so, and that if the Government acted *ultra vires* it was afterwards condoned.

(*Mr. Rooth.*) Yes, I do not claim that it was in accordance with these regulations. I would further point out to you that this whole question of the two hundred and thirty thousand shares is really the same as that raised by the auditors in connection with the deduction of the 8 per cent. on that amount previous to the Government receiving its 20 per cent. Of course, a great deal may be made of it, but it would not be a question for the cancellation of the contract. It is £3,680 per annum for a couple of years.

(*Chairman.*) Why a couple of years?—It is during the whole time.

(*Mr. Rooth.*) It was paid out of the accumulated profits. It is 20 per cent. of 8 per cent. of £230,000. The next question is when does the building period commence. Was the company bound to have completed the factories two and a half years from the 23rd October, 1893, or from May, 1894. You will have observed that in the regulations no mention is made as to when this period of 2½ years shall commence. In the contract itself it is provided that the period shall commence in October, 1893, but as early as 1895 the company approached the Government and pointed out that it might be necessary to ask for an extension of time.

(*Chairman.*) You say, first, that the date is not stipulated in the regulation, but that it must be two and a-half years from the date of the contract.

(*Mr. Rooth.*) That is my contention.

(*Chairman.*) That would be two and a-half years from the 25th October, 1893, in the first place.

(*Mr. Rooth.*) The building period is to date from the contract of May, and not from the contract of October.

(*Chairman.*) Unless there is consent of the Raad?

(*Mr. Rooth.*) The consent of the Raad which we asked is to limit the capacity of the factory to 40,000 cases per annum, and it was in connection with this article that the company in June, 1894, wrote a letter to the Government asking them to put before the Volksraad this request, and that was refused. I hope you are clear on the point that the refusal of the Raad was not with reference to the request to extend the building period to two and a-half years, but with respect to the request to limit the capacity of the factory.

(*Chairman.*) I am afraid I have not got that clear as a fact.

(*Mr. Rooth.*) If you refer to Section 6 of the contract. The idea of the company at that time was if possible to get the consent of the Volksraad to limit the capacity to 40,000 cases, and it was with reference to that that the request was before the Volksraad, and not to the extension of the building period. Here is the letter itself, page 25 of the correspondence.

[Translation.]

Pretoria, 8th June, 1894.

To the State Secretary of the
South African Republic, Pretoria.

Sir,—With reference to the new contract entered into with me by the Government on the 24th May, I have the honour to request the Government in terms of Arts. 6, Sec. 2, to kindly make application to the Volksraad during this Session for a resolution.

Fixing the productive capacity of the works to be built in the first instance at 40,000 cases p.a., and 26 Oct. 1900.

Authorizing the continuation of the arrangements set out in Art. 16 of the abovesaid contract with the object of meeting the further requirements of the country in respect of explosives.

I have the honor to be,
Yours obediently,
(Signed) L. G. Vorstman.

(*Chairman.*) Therefore the question of what you call the building period was directly brought before the Raad by your request of June, 1894, and was directly refused by them in September.

(*Mr. Rooth.*) It was not the building period only. It was the building period for 40,000 cases.

(*Chairman.*) That is disjunctive. You have got two requests, first, that the provisional capacity should be only 40,000, and further that you should have an extension of the building period beyond the 2½ years.

(*Mr. Rooth.*) No, sir. The continuation of the arrangement under Article 16 is in reference to the importation of explosives.

(*Chairman.*) That was beginning with the two and a-half years. You have got to deal with the express refusal of the Raad not merely to limit the productive capacity, but the express refusal to extend the two and a-half years.

(*Mr. Rooth.*) If you read this letter of June you will find it is arranging for importation.

(*Chairman.*) This very valuable right to you to import and the circumstances of the two and a half years are not linked? The request before the Raad was not in connection with the building period, but an extension of the period during which the arrangements were being made.

(*Mr. Rooth.*) I submit that the matter put before the Volksraad was not the question of extending the building period, and that was not the point voted upon. The point was whether the period during which these arrangements were in effect was to be extended or not, but the two things were quite distinct.

(*Chairman.*) Have you anything else? At present there is a request to do certain things, and then there is a refusal to grant what was requested. You are at present relying upon that request and refusal as permitting you an extension of time. Assuming that is the meaning you attach to it, it is a rather fine argument, is it not?

(*Mr. Rooth.*) I do not say it is my argument.

(*Chairman.*) What did extend your time?

(*Mr. Rooth.*) The express consent of the Government.

(*Chairman.*) That will not do, because even in the contract it says "such extension of the time as the Raad may approve." You have dealt with the argument put against you that you went to the Raad and asked for an extension of time. You have dealt with it as best you could. Having dealt with that, on what authority do you rely as making the Raad a party in any way to the extension of time from April, 1896?

(*Mr. Rooth.*) All those Volksraad resolutions I have put in. These are my sheet anchor. These Volksraad resolutions I submit bring all these questions into absolute clearness.

(*Mr. Ashmore.*) Surely you quote these resolutions as confirming the second contract, not as altering it.

(*Mr. Rooth.*) As proving that the contract of May was not possibly a breach.

(*Chairman.*) You mean as sanctioning any departure by the Government from the regulations.

(*Mr. Rooth.*) Yes. I will now put before you the letter of the Government agreeing to the extension of the building period, page 29, 14th July:—

Translation.

Pretoria, 14th July, 1894.

Sir,—In reply to your favour of the 8th June last, by which you ask the Government for an assurance that should you with every possible reasonable despatch proceed with the selection of a site, the preparation of plans for the erection of the new factories, the Government shall then, but only in case of need, admit that the two and a half years in which the factories must be ready, shall date as from the 24th May last, instead of from the

26 Oct. 1900.

25th October, 1893, and I beg to inform you that the Government hereby give you the said assurance.

I have the honour to be, Sir,
Your obedient servant,
(Sgd.) Dr. W. J. LEYDS,
State Secretary.

L. G. Vorstman, Esq.,
Government Agent, Pretoria.

It was pointed out to the Volksraad in 1896 that the factories would only be ready at the end of that year, but the Volksraad never took any decision that this contract should be cancelled. On the contrary, the Volksraad ratified what was done by the Government. It appeared clearly from the evidence of Mr. Bourne and Mr. Vorstman that when the promoters of the new company refused to enter into the contract with the Government the latter would in case of need regard it as from May, 1894.

(*Mr. Ashmore.*) Then your contention is that the Government went to the Volksraad, having given leave to the factory to go on building for two and a-half years from May, and asked for permission to go on with the importing? The Volksraad declined to sanction the importing arrangements.

(*Mr. Rooth.*) No. The application to the Volksraad by the Government on behalf of the company was to agree to the factory being limited in the first instance to 40,000 cases, and in the meantime to extend the period during which the arrangements for importation would continue.

(*Mr. Ashmore.*) The Raad negatived both?

(*Mr. Rooth.*) Yes.

(*Mr. Ashmore.*) However, from May, 1896, to October, 1896, the importation continued without authority from the Raad, which was an express breach of the instruction.

(*Mr. Rooth.*) No, because the Raad specially voted the money for the purchase.

(*Mr. Ashmore.*) Before or after May, 1896?

(*Mr. Rooth.*) In September, 1896, Art. 1,293, an item of £600,000 for the sale of explosives is passed. I would now come to the question of the completion of the factory—as to when the factory was ready. From the evidence of Mr. Conrath it is clear that in June, 1896, the factory was completed and ready for use in all essential departments for the manufacture of explosives. On the 10th June, 1896, the factory commenced making sulphuric acid. His evidence on that point is exceedingly clear.

(*Chairman.*) The points against you are that in point of fact the company manufactured only a very small amount—8,000 cases, I think—during the whole of that year, and that Mr. Conrath has explained why it was improper to commence working on a large scale in these factories, and that on his own showing they were just ready, but that the staff was insufficient.

(*Mr. Rooth.*) I do not think there was evidence to that effect.

(*Chairman.*) He said so. He said that the staff were of different nationalities, and that they were in a state in which it would be dangerous to employ them to the full capacity of the factory. That is a point you have got to deal with.

(*Mr. Rooth.*) What I understood Mr. Conrath to say in that respect was this, that the labourers after they came there were of many different nationalities, and, just like a team of horses, had to be exercised together first. But very soon they could get them into working order, and Mr. Conrath said that the factory was completed, and that if he got the six weeks' notice they could actually have complied with the requirements of the country. Now, what are the requirements of the country in that respect? Section 9 of the regulations reads:—"The quality and quantity of all articles, manufactured shall remain in accordance with the requirements and the demands of the Government and the public of the South African Republic, and the articles of every description shall be of the best quality.

Now there can be no question with regard to the Government. The Government completely and absolutely agreed to the production of only a certain quantity of explosives by the factory, so that the Government would be estopped from saying the company had broken its contract by not producing an adequate supply. The second point is the requirements of the country, and I maintain that in arriving at that the company was entitled to take into consideration the stocks in the country at the time. At that time there was in the country a stock of 121,483 cases. In November, 1896, there was on hand 162,000 cases. Now, even admitting that the building period itself is from October, 1893; that would run on to the end of April, 1896. We have in evidence the fact that the factory was delayed by about six weeks on account of the Jameson Raid, and I do not think that on account of the delay thus occasioned the contract could be cancelled. That brings us to June. Then there were 120,000 cases in stock, and we manufactured a sufficient amount from then until the end of the year to keep up to the demand of the country.

(*Chairman.*) Is your case that you could procure from Nobel 200,000 cases, and keep up your order for importation for another year, by showing that there was a large stock in the country?

(*Mr. Rooth.*) No; but if the Volksraad votes the money and allows the Government to import, then we were entitled to ask ourselves, what is the stock of explosives in the country, and we will supply the balance.

(*Chairman.*) Are you going to deal with the question of *bona fides*?

(*Mr. Rooth.*) Mr. Vorstman and Mr. Klimke acted as agents of the Government, and they had nothing to do with the company.

(*Chairman.*) Though they had the relations with the company, which we know?

(*Mr. Rooth.*) The company as company had nothing whatever to do with them. The Government had appointed those gentlemen to advise them with reference to what had to be imported, and whatever the motives may have been which may have actuated those gentlemen in advising the Government, the fact remains that there was a large stock of explosives in the country imported by the Government with money voted by the Volksraad; and I say that while we manufactured the balance required we carried out the terms of our contract.

(*Mr. Ashmore.*) Supposing the stock would have been half a million, in that case the requirements would have been nil, and then although you had no factory at all you would be within your contract.

(*Mr. Rooth.*) The condition of the contract was this, that we should erect a building and bring it into working order. That we had to do.

(*Chairman.*) But then supposing that the factory was not bigger than a desk, if you had half a million cases in the country you would have complied with your contract.

(*Mr. Rooth.*) No, because then the factory would not be sufficient to comply with the requirements of the country. My point is this, we had here a factory which was able to produce the requirements of the country, but when it came to manufacture we were entitled to take into consideration what there was at that time, because it is not an invariable quantity. We could not assume that the stock that was in hand would always remain there, or that the Volksraad would continue voting money for importing. Say, at the time that our building period had expired the Government had previously allowed the companies to import for themselves a large stock of explosives by means of permits; say, the consumption then had been 200,000 cases, and that there was in the country 150,000 cases, what we would have to manufacture would be 50,000 cases. Say there had been a strike, and the mines had shut down, or take the case of the war, and if that agreement is correct we must carry on manufacturing irrespective of what is in the country. I say we were entitled to take into consideration the exact state of circumstances as they then were, and so long as by our manufacture and exertion the public want is satisfied no question of breach of that contract can be brought up. The question of how these explosives get into the country has nothing to do with the company. We as a company said, "We find a certain quantity in the country, and we will manufacture the balance."

(*Chairman.*) Let us put a concrete case. How does it work out in this case? Mr. Vorstman in his capacity as managing director of the company goes to Mr. Vorstman, who is representative of the Government for importing purposes, and says, "My company would

like importations to go on"; and then Mr. Vorstman, as adviser to the Government, says, "Yes, the Government by all means shall import"; and then the Government, through Mr. Vorstman, would go to the Hamburg Company, which is under an obligation to obtain supplies from Nobel's at a price that Nobel's can dictate, and the stuff is sent forward, and amounts to 120,000 cases. Can that really be said to be within the meaning of this contract? You then only have to produce 80,000 cases at this factory, which is supposed to be in complete working order?

(*Mr. Rooth.*) My point is this, that Mr. Vorstman, if he had gone to himself a hundred times, could not have imported one case of explosives unless the Volksraad had specially authorised the importation.

(*Chairman.*) I wish to do perfect justice to your argument, and to get away from disagreeable topics. But how can you get away from the manner in which the opinion of the Raad was influenced in this matter?

(*Mr. Rooth.*) I am not here to defend the moral position.

(*Chairman.*) I mean the legal one. It is not these gentlemen here, it is the company in Hamburg. They authorise this. They direct it.

(*Mr. Rooth.*) I put it to you what evidence is there that a single Volksraad member got sixpence. There is not a tittle. How can anybody say that those intermediaries did not stick to the money? I submit there is not a tittle of evidence. Whatever the idea might have been, there is not a tittle of evidence that any Volksraad members took one penny of that money. How can the shareholders be responsible as shareholders for what a benevolent director should do?

(*Chairman.*) Even assuming that what you say is correct, the Raad in the first place is informed by the Executive Council, and how can you say that the means that have been taken to get at the Executive Council and Mr. Klimke, their adviser; how can you say that the information the Raad had was correct or of an unstained character?

(*Mr. Rooth.*) My answer is that the people to challenge the correctness of that information are those who appoint them.

(*Chairman.*) £40,000 was sent into the country for Secret Service, and this Mr. Alberto Philipp admitted was money for bribing members of the Raad, and which Mr. Vorstman admitted he paid over to a man to pay to members of the Raad. How can you rely on resolutions that have been arrived at in view of flank attacks of that kind? The shareholders you were speaking of are Nobel's Trust, I understand.

(*Mr. Rooth.*) No, they are all over France and England.

(*Chairman.*) They will have a remedy against Mr. Max Philipp and his board.

(*Mr. Rooth.*) As to what you say with reference to the importation of moneys; how can that affect the Volksraad resolutions before that date?

(*Chairman.*) It begins in April, 1896, remember.

(*Mr. Rooth.*) Take the Volksraad resolutions of 1894. In the Chamber of Mines petition they put the entire position before the Volksraad. There is not a suggestion that at that time there was any undue influence being brought to bear on the Volksraad. Before this company was in existence the Government agreed to the allocation of 182,000 shares to the old company, which also may be irregular. It is easy to ascribe motives.

(*Chairman.*) No one has the right to assume corruption against the members of a board unless they have themselves admitted that they have endeavoured to corrupt or be corrupted.

(*Mr. Rooth.*) Take the matter from a practical legal aspect.

(*Chairman.*) Can people claim advantages for themselves from a fraudulent source?

(*Mr. Rooth.*) On the other hand, can any resolution of a legislative body be challenged on the grounds of the motive that may have induced any man to vote this way or that?

(*Chairman.*) If A or B came before a law court on a resolution of the House of Commons, and he himself admitted that he had bribed a certain member to procure it, do you think the court would assist him?

(*Mr. Rooth.*) I submit, with all deference, that I do not think that the courts would fail to enforce the laws passed by the Legistlature. 26 Oct. 1900.

(*Chairman.*) In favour of certain individuals?

(*Mr. Rooth.*) Whether it is in favour of a company or an individual.

(*Chairman.*) That is not quite the position here.

(*Mr. Rooth.*) That is my point—that it is not possible that the Government could——

(*Chairman.*) Is it such an obligation as an annexing country could be asked to take over?

(*Mr. Rooth.*) That is a political question.

(*Chairman.*) No, indeed, it is a legal question.

(*Mr. Rooth.*) I submit that the British Government coming here is as bound as the Transvaal Government would have been.

(*Chairman.*) You will find that a very difficult proposition to sustain by International Law. According to that argument the Government and the Raad might, after the beginning of the war, have bought rifles to the extent of a million pounds, and then we would have to be asked to pay for them. That is within the scope of your argument.

(*Mr. Rooth.*) It could not be expected that the conquering Power should have to pay for them when the conquered party bought them.

(*Chairman.*) There must be, in reason and commonsense, a limit to the obligations of the annexing State. Is it not a very strong thing to say that an obligation which has been incurred after wide-spread corruption and fraud is a class of obligation which the incoming Government can be asked to recognise.

(*Mr. Rooth.*) If these things are clearly and fully proved; but I submit that whatever the position of the company may be—and I am not here to defend the moral aspect—the conquering Power, wishing to avail itself of that right, cannot say that on account of turpitude or corruption it is not going to recognise any particular contract or right, without the clearest and strongest evidence. The matter came to me as a perfect revelation and surprise, and I am not prepared at this stage to enter into the topic.

(*Chairman.*) It is not your fault that you have such a matter to deal with.

(*Mr. Rooth.*) The Government agreed to the amount of explosives that was manufactured, and the company was entitled to take into consideration the stocks in the country, these having been imported in the manner which I have already explained. I do not know whether the Commission has had time to read that statement of our case.

(*Chairman.*) We will read it.

(*Mr. Rooth.*) Then there is another point—the question of public interest. I think it will be unnecessary for me to labour the point that the importation and conveyance of explosives for thousands of miles will always be a source of public danger, and that the populous centres through which those trains will pass will place restrictions and difficulties on the transport of explosives. I think it is unquestionably in the interests of the mines to have a factory independent of foreign control, because if a big accident were to happen and we had the local authorities restraining the transport of explosives, it would place the mines in a very serious condition. With regard to the prices, it appears very clearly from Mr. Bourne's statement that if you analyse the matter the real difference in price between what the factory charges and what it could be imported for is only 3d. per ton; and that is so insignificant a matter that it really cannot keep a mine from working. If you refer to the evidence before the Industrial Commission you will find that some witnesses went so far as to say that 6s. a ton would make very little difference as to whether a mine would shut down or not. This difference in price would not cause one mine to shut down. Assuming for argument's sake that the contract was cancelled and that free importation were allowed and the mines were permitted to import as they liked, that would not cause one more mine to work that is not working to-day. And the question arises whether under these circumstances it would be advisable to shut down a factory which employs hundreds of workmen.

(*Chairman.*) We had not any evidence that the cancellation would shut down the factory.

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(*Mr. Rooth.*) It may be shut down directly or indirectly. Then, Mr. Goldring, in his statement, says that the existence of the contract discouraged invention, but I think I need only refer you to the regulations, sections 12 and 7 of the contract, under which it is in the power of the Government to allow a new patent if taken out here, to be exploited on conditions to be settled—if not between the parties themselves, then by arbitration; so that should any better explosive be discovered or patented there can be no question as to this contract preventing the exploitation of that patent. Clause 10 of the contract is very clear on that point also. Under these circumstances I submit that whatever there might have been wrong, whatever there might have been incorrect, at the time when the company was started, and should there have been breaches of the contract through the company not having been ready to manufacture at the time stipulated—then I submit that the Volksraad besluiten and the action of the Government have clearly confirmed and ratified whatever may not have been correctly done by the company at the time, and that it is far too late in the day now for the Government, or the British Government in its place, to go back on breaches previously committed. The company has altered its position, and has spent hundreds of thousands of pounds, and I submit that there is at the present time a factory second to none in the world, fully capable of manufacturing the requirements of the country in the shape of explosives.

(*Mr. Ashmore.*) Unless you are going to make a point that the factory cannot work without the monopoly, the appeal *ad misericordiam* is of no effect.

(*Chairman.*) You have told us of the difficulties of importing, and, therefore, that is not in your favour?

(*Mr. Rooth.*) That is a commercial question that I have not gone into. I have only touched upon this question because the Chairman announced that he would like to hear something with reference to the public interest. I cannot tell you how far the company would be able to carry on business under circumstances other than those now existing.

(*Chairman.*) It became necessary, as a part of your argument, to show that if this contract was dealt with adversely, the factory would be shut down, and that it would bring about those difficulties of transport to which you referred. But your argument lacks the fact that the factory would be shut down.

(*Mr. Rooth.*) On that point I have no instructions.

(*Chairman.*) I am much obliged to you for your argument.

(*Mr. Curlewis.*) I called your attention to some points in certain letters contained in the compendium put in by Mr. Rooth.

SELATI RAILWAY CONCESSION.

Mr. JOSEPH HENDERSON, called; and Examined.

Mr. J. Henderson.

3102. (*Chairman.*) With regard to the Concession itself, Mr. Henderson, I see article 25 of the Concession provides that £10,000 only, in fully paid shares, shall be paid for the transfer of the Concession?—Yes.

3103. But I gather it to be a fact that the Government contemplated from the first that the Concession should be transferred?—Yes, and you will find an authorisation from the State Secretary to publish that.

3164. In point of fact, how much was paid altogether to the original Concessionaires?—In point of fact, as far as the company is concerned, only £10,000, in shares. But we have put in evidence there that we are informed that the directors made certain arrangements with the Concessionaires, under which the Concessionaires were to be paid a much larger sum. You see the whole of the contracts are there.

3105. In point of fact, in the first place, £100,000. Oppenheim entered into a contract with the Concessionaires, by which he gives them £100,000 in fully paid shares?—Yes.

3106. After that arrangement the case of the Transvaal Government against Oppenheims was that they also obtained for themselves the difference between the authorised contract price and the actual contract price, which Warnant passed? That is the case against them?—I don't think so. The case of the Transvaal Government is against the company; it is not against Baron Oppenheim at all. The case of the Belgian Government was against Oppenheim.

3107. That is the criminal matter?—The case of the Transvaal Government is not against Oppenheim at all.

3108. The allegation of the Transvaal Government is, is it not, that the Oppenheims, having an obligation to construct this line at a maximum of £9,600, or for such price as it could be constructed, sub-let the contract for £7,000 odd, having obtained one for £9,600?—No, it was the contractor who did that.

3109. It was alleged, wasn't it, that the contractor was a nominee of Oppenheim?—I cannot say that. The knowledge we have is that the Transvaal Government complained that the share capital had not been paid up. But the share capital was paid up, inasmuch as a contract was entered into that was absolutely known to the Transvaal Government at the time. This is, of course, the company's statement. It was absolutely known to the Government or its agent at the time that the share capital was fully paid up. In that contract with Louis Warnant there was a sum of £400,000 due to him in cash so many days after the signature of the contract. Whatever arrangement Louis Warnant came to with Oppenheim has nothing to do with the company. The company received the £400,000.

3110. We want to get the facts through you. We know you have a great deal of difficulty, having come later into the company. Let us take matters in sequence of date. First of all, it is alleged against the company and against the validity of the Concession, that although the Concession authorised the payment to the concessionaires of £10,000 shares only, they, in point of fact, got £100,000 in shares from the company. Against the validity of the Concession it is alleged there has been a breach of one of its fundamental terms—that although the Raad only sanctioned £10,000, £100,000 was paid?—I believe that is the case, but so far as the company itself is concerned, they only paid £10,000.

3111. That being alleged against the Concession, you have put in here certain documents which certainly go to show, so far as I can draw inferences from them, that the Government of the Transvaal not only permitted the £100,000 to be paid to Vorster and others, but actually suggested the payment of a larger sum than £10,000?—Yes, that is the information which I have obtained from the documents and the copies I have seen.

3112. And your position about that is that, so far as the company is concerned, at any rate, it does not lie in the right of any Government to visit against the company that which they themselves suggested?—Yes, suggested, and condoned afterwards.

3113. That does not deal with the position of the Raad, behind whose back this was done?—No, sir.

3114. Now to get to another date. After this Concession was granted, and after these payments were made, the matter of the construction contract was gone into?—Presumably so; I have no personal knowledge.

3115. This, which you have put before us on the construction, is taken from the documents to which you had access?—Yes.

3116. On the 6th September, 1892, this construction contract is entered into by the company. It is not the directors?—It is the company.

3117. Represented by the directors Oppenheim?—Yes.

3118. Louis Warnant was what is called an engineer?—Yes.

3119. Do you know him personally?—No; in fact, I do not know any of these.

3120. That was a contract for the construction of the railway for £9,600 a mile?—Yes; that was the absolute limit. I understand the company stated it was the only tender they received at the time.

3121. On the very same day, I think—on the 9th September—Louis Warnant advises the company that he ceded his contract?—Yes, between the 6th and the 9th September—within a day or two of the first contract.

3122. He cedes it to Westwood and Winby, and informs the company that the amount to be paid to them was £1,348,000, or, in other words, £7,000 odd per mile?—Yes.

3123. The whole difference between those two sums on the whole mileage—the £9,600 a mile and the £7,000 is about £400,000. The whole of that difference of £400,000 goes into the pocket of Louis Warnant?—Apparently so.

3124. Can you say whether he is a dummy of Oppenheims or not?—I cannot say. I do not even know that it is alleged that he was.

3125. We want the contract between Warnant and certain Frenchmen. It throws a light on Louis Warnant?

(*Mr. Duxbury.*) You will find it in group II. of the documents.

3126. (*Chairman.*) It is a contract between the Count d'Adhémar and certain other Frenchmen of Paris and Baron Eugene Oppenheim, and it is dated 20th January, 1892. Therefore, it is a considerable time before this contract and sub-contract?—Yes.

3127. And it cancels antecedent agreements and so forth. Article II. reads:—

ARTICLE II.

The parties of the first part retain in the entire business an interest of fifteen per cent.; that is to say, they are entitled to fifteen per cent. of all the net profits whatever may result from the business. By net profits, must be understood the profit which will result from all sums spent for commission or fees, or for the payment of the shares. For it is recognised by the parties that by common consent a combination is to be carried out, in virtue of which the net minimum profit shall be twelve million two hundred and fifty thousand francs in fully paid shares, or for the parties of the first part one million eight hundred and thirty-seven thousand five hundred francs in fully paid shares. It is agreed, however, that if no other profits should be made it will be divided in the same proportions.

3128. (*Mr. Ashmore.*) The sum of money actually provided is £490,000. That is the difference between the £500,000 share capital and the £10,000 authorised by the Concession?—Yes.

3129. In other words, there is an agreement between Oppenheim and those French financiers that they will obtain as profit to themselves the entire share capital of the company after the £10,000 has been paid?—Yes, but that agreement was never presented to the company as a company. It was an agreement entered into by the agent of the Government while acting as their agent.

3130. (*Chairman.*) It throws a light, doesn't it, on the transaction between Oppenheim and Louis Warnant afterwards?—Yes.

3131. And I suppose the inference you draw from this is that the contract and sub-contract was a way of putting into effect the stipulation of the earlier agreement between the French financiers?—It is impossible for me to say; but it looks very like it. But it is a common way of entering into contracts—that a certain sum should be provided to the contractor a few days after the signing to provide material, and you must not lose sight of the fact that a great many other things than profit was provided out of the £400,000.

3132. I could understand that if it was a contract between ordinary people, but you see the circumstance is that the Raad is authorising a railway line, which is of an exceedingly speculative character, and are saddling the Government with the burden of guaranteeing both the shares and debentures, and, therefore, directly you get the Government and the Raad hoodwinked as to the amount which the Concessionaires were going to receive and the method of dealing with the share capital, you have them taking upon themselves and the country an obligation which they never contemplated?—The company never did that. We, as a company, had no knowledge of this contract at all.

3133. No. First, we want to see, so far as we can gather from these documents, what was the position of the original Concessionaires, the Government, and the Oppenheims?—Yes.

3134. When this sub-contract has been entered into with Louis Warnant and afterwards sub-let to Westwood and Winby, the company accept the cession. Does the Government accept the cession also?—We presume so. I have no knowledge at all of that. They were quite well aware of it when they sent their expert to examine the books early in 1894.

3135. As it seemed, the situation was that when Westwood and Winby got the contract, they would have to be paid, the whole of the share capital having been exhausted, entirely out of the proceeds of the debentures?—Yes.

3136. And that is exactly what occurred?—Yes.

3137. What is the first date of the debentures?—January, 1893.

3138. Within a few months of the cession of the contract?—Yes; that was an absolute variation of the original concession, because the debentures had to be issued one-fifth as to so-and-so.

3139. Then Westwood and Winby begin to construct and go on constructing for some time?—Yes.

3140. Then I suppose the first thing that occurs is the difference as to route?—Yes.

3141. Is that before this investigation by Westerman or after?—After. The company had applied to the Government, as their funds were exhausted, to supply them with money to pay the interest on the share capital and on the debentures to the 30th June, 1894.

3142. And in order to satisfy themselves whether the request should be complied with they told Van Blokland in Belgium to appoint an expert to go into the books of the company?—Yes; in Brussels or Paris. The expert duly went into the books and made his report. It was sent to Van Blokland, and Van Blokland sent it to the Transvaal.

3143. That was in?—1894.

3144. January?—No, I think it was June.

3145. Yes; it was in January, 1894, that he was sent to examine the books?—At any rate the Government authorised Van Blokland to pay the interest after seeing that.

3146. On the share capital?—On the share capital as well.

3147. I see on the 7th June, 1895, the Commissioner writes to the company, as follows:—

Translated from the Dutch.

London, 7th June, 1895.

Gentlemen,—As it has appeared to me from an investigation made that your administration leaves much to be desired, and the terms of the concession have not been duly observed by your direction, these presents are to inform you that I have advised my Government to pay no interest on the share capital of your company pending this question and investigation, and subject to the result thereof. Our Minister, the Right Hon. Jhr. Beelaerts van Blokland, has, however, instructions to pay the interest on the bonds.

I have the honour to be,

J. S. SMIT, R.C.Ry., S.A.R.

To the Franco-Belgian Railway Company of the Northern Ry. of the S.A.R.,
42, Rue de Louvre, Paris.

(*Witness.*) That is after the expert Westerman examined and reported on the books to the Government, and they seemed to have satisfied themselves, or at all events received a report, that all was in order.

3148. (*Mr. Ashmore.*) Were the Oppenheims still directors of the company at that time?—Yes.

3149. (*Chairman.*) After that is the construction affected?—The construction was affected, I believe, only

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early in 1895, but I am not aware when actually the works stopped.

3150. Then when does the difference of opinion commence about the route?—The difference of opinion commenced, I believe, about August, 1894.

3151. Had any change in the constitution of the shareholding body taken place in August, 1894?—No actual change, but just about that time the company approached Van Blokland in Brussels and informed him that there was some talk of issuing a certain number of the shares upon the London market, and asked whether, to enable them to do that, he would give the assurance of the Government that the Concession was all right. Anyhow, would he give his approbation to the share certificate, because the company had previously, on the issue of the £500,000, got an assurance from Van Blokland that the Government granted the Concession, that the Concession was valid, and that the Northern Railway Company of the Transvaal were the real holders. Van Blokland was about that time approached with a view to certifying to the share certificates, and you will see his certificate among the documents. It came to his knowledge practically that the company was to be an English one.

3152. (*Chairman.*) I have here the certificate. Mr. Blokland sends a specimen to the secretary of the company in his letter of 11th December, 1894. The coupons, I see, have a minimum dividend of 4 per cent. guaranteed?—Yes.

3153. What had led to this change?—You see when the 300,000 shares were issued to the English public, according to the Trust Deed the control of the company passed into English hands. That was, I think, in February, 1895.

3154. Why were the French people getting rid of their shares, and why were they placing them in the English market?—I do not know.

3155. How did it come to your knowledge?—I have not the slightest idea.

3156. Something must have occurred to the French shareholders?—I can only tell you what is said here—that it was placed in the hands of a group. Who that group was composed of I do not know.

3157. (*Chairman.*) Something appears to have occurred by which these gentlemen judged that it was a proper time to break the pool?—At that time I believe an issue of one million debentures was contemplated, and it was a very successful issue. I believe it was subscribed some fifteen times over, and it is just possible that these gentlemen who held these shares imagined that it was a very fine opportunity to get rid of their shares. That is only supposition. In August or September, 1894, they issued one million debentures.

3158. At any rate, following soon on that, these 300,000 shares were transferred to Englishmen?—Yes, transferred by trust deed and issued to English people.

3159. They had been issued before?—They were all bearer shares. The trustees issued certificates to applicants for shares.

3160. That is in February, 1895?—Yes.

3161. From February, 1895, the control of the company and the interests of the company became English?—Practically English.

3162. There are some French shareholders?—Yes; in fact, it is impossible to say where the other 200,000 shares are.

3163. You told us that in August, 1894, difference of opinion began to arise between the Transvaal authorities and the company with respect to route?—So I was informed.

3164. I see that on the 30th August, 1894, the chairman of the then company writes to the Government Commission:—

Translated from the Dutch.

A. 675/94.

Pretoria, 30th August, 1894.

The Government Commissioner, Pretoria.

Dear Sir,—We beg respectfully to bring the following under your notice.

As you are aware, the negotiations concerning the second issue of debentures have taken a considerable time, in consequence of which the funds of the company were practically exhausted.

As a result of this, and, moreover, the uncertainty when this issue would be allowed, the contractors did not dare to incur further great expense, and they have consequently been forced to stop the work to a large extent.

Now that the issue has taken place, however, the contractors are desirous of resuming the work energetically, in order to make up for lost time. This, however, they cannot do, as the plans for the further sections have not yet been approved.

The permanent way is quite ready as far as the end of the 9th section, and no progress can be made with the permanent way until the further plans have been approved.

The work of the permanent way has therefore to stand still, and this is all the more to be regretted, as the best time of the year is going by without any work being done, while there are a thousand Kaffirs on the spot who must now remain idle.

With a view to the above, we respectfully take the liberty to press for a speedy approval of the plans submitted to you for the 10th and 11th sections of our line.

We remain, etc.,
On behalf of the Local Board,
(Signed) J. N. De Jongh, Chairman.

3165. (*Chairman.*) On the 16th October, 1894, the Commission replies as follows:—

Translated from the Dutch.

[copy.]

R.C. 679/94.

Office of the Government Commissioner,
Pretoria, 16th October, 1894.

To the Directors of the Selati Railway Company, Pretoria.

Gentlemen,—In answer to your letter dated 30th July, 1894, and 6th August, 1894, and your further continual and earnest requests for approval of the plans of the 10th and 11th Sections of your line, I have the honour to inform you that after examination I find that these plans cannot be approved by me, because your company has, without permission of the Government, very much departed from the route of Bechtle and Marais, and so much so that the line, as far as nearly 200 km. in Bechtle and Marais has been made more than 45 km. longer, whilst a line has been chosen which, through scarcity of water and gradients, will be very expensive to work.

All this will be very much to the detriment of the State and the future consumers, and will only be to the advantage of the contractor and others.

I must further request you not to continue any work on the 8th and 9th sections (already approved by me) as such consent was given under misleading circumstances, as at that time I had confidence in the company, and did not think otherwise and always supposed that the company had adhered to the direction of Bechtle and Marais as sanctioned by the Executive Council, and communicated to you by letter of the State Secretary of the 28th August, 1892, in which amongst other things, you were informed that everything had to be done in conjunction with the Government Commissioner.

Finally I must refer you to the letter of the 12th June, 1894, of the State Secretary to your company, part 4, and must repeat that the Government will strictly adhere to Article 25 of the concession.

I have the honour to be, etc.,
(Signed) J. S. Smit,
Government Commissioner.

3166. (*Chairman.*) Article 25 was the article referring to the £10,000?—Yes, that is so. I think I ought to tell you that it was just about that time that the appointment of Mr. Mooijen as technical expert was made.

3167. More than three months elapsed after that before the English shareholders came in?—Yes.

3168. Then there arises between the company and Mr. Smit the controversy as to the route, which has never been adjusted?—It has never been adjusted. It has been tried to be adjusted, both by Volksraad Commission and otherwise.

3169. (*Mr. Ashmore.*) On that second debenture issue of a million was there not a claim of 6 per cent. for fees on the issue put forward by Vorster?—I think it was for the first issue that Bogaerde wrote. On the second there was no claim of any kind.

3170. (*Chairman.*) May I ask this general question with regard to route? The allegation of your company is that the Government had put vexatious obstacles in your way?—From a certain period. As a company we were allowed to go and finish up to kilo. 119, and then the Railway Commissioner said: "You must abandon portion"; and when he was asked, "Who is to pay"? he refused to answer. Then a Volksraad Commission was appointed, and they declared that the line should go on from the point it reached and go up to Lydenberg, with a branch line for the Selati. I believe Mr. Smit was instructed to have that survey made, and I am also under the impression that it was 12 months afterwards that Mr. Smit was asked in the Volksraad if that had been made. He had not even sent out to it. Then I believe Mr. Mooijen went out and tried to find a line in accordance with that black line on the map.

3171. You are not an engineer?—No, and I had nothing whatever to do with this. I only speak from hearsay.

3172. (*Mr. Ashmore.*) Since that date the works have stopped?—They stopped early in 1895.

3173. (*Chairman.*) And nothing has been done since?—Nothing has been done since.

3174. And all the material sold?—The company advanced money to the contractors, but the bills of lading remained in the contractor's hands, and so far as they were concerned the goods were the legal property of Westwood and Winby, although the company made advances upon them. They held the documents. The company tried to do their best to get the Government to step in and get the property declared that of the company, but legal proceedings were taken against Westwood and Winby, and the consequence was that these supplies were sold by auction and bought by Toleman.

3175. And Westwood and Winby were practically ruined?—Yes; but they have given notice that they have a claim against us.

3176. (*Mr. Loveday.*) All this material was sold for a very small sum of money?—I believe that altogether it realised £8,000.

(*Mr. de Korte.*) £21,000.

(*Witness.*) The value of this was something about £150,000.

(*Mr. de Korte.*) It was bought in by the Executors. They obtained judgment.

(*Witness.*) The £21,000 did not go to the credit of the company. It went to the credit of Westwood and Winby. We have £350,000 in London, the balance of the one million debentures.

3177. (*Chairman.*) What is the £20,000 that figures in the documents?—That is a deposit—the caution money. It is in the hands of Labouchere, Oyens and Company, Amsterdam, with accrued interest. It is the property of the company.

3178. It is the property of the company, but I suppose it stands in the name of the Transvaal Government. Is this an estimate of the cost of building the railway?—It was drawn up with a view to showing what the action of the Government has cost the company, exclusive of any claim the contractors may establish against the Government or the company. The total length of the line is 212½ miles, of which 74 miles have been constructed, and that leaves a balance of 138 to be done. Then it is presumable that the Government will order the company to proceed from the 119th kilo., either in accordance with the Volksraad Commission's report of 1895 or 1896, or on any other independent report; and we put that down in the statement. Then, as you are all aware, iron has advanced terribly in price, and naturally, seven years having elapsed since the original contract was entered into by the contractors, the cost of procuring the steel rails will be very much greater than it would be seven years ago. Then I presume the 74 miles already completed will require repairs. These are supposititious figures.

3179. (*Mr. Loveday.*) Then it comes to this, that the present liabilities are two millions?—Exactly.

3180. In order to complete the line you want £1,119,000? That gives you £3,119,000?—Yes, exclusive of Westwood and Winby's claim.

3181. So, roughly, 3¼ millions is what the line would cost if it is built?—Yes. It has cost the Government £980,000 more than it ought to have done.

3182. (*Chairman.*) The position of your company is that you take your stand entirely on the Government guarantee?—Yes.

3183. And you say the Government guarantee is wholly unimpaired by any frauds or irregularities perpetrated by those original concessionaires?—And that prior to 1893 we have a Government certificate that everything is in order, and that the Government paid the interest on the whole of those shares in 1894.

3184. (*Mr. Ashmore.*) Once or twice?—Only once: up to the end of 1893.

3185. (*Chairman.*) And you rely upon that?—That is one of our points.

3186. (*Mr. Ashmore.*) That was after the Government had notice of Oppenheim having sub-let the contract and pocketed the difference?—Yes, after the Government had known everything connected with the formation of the company, and their expert saw the entries in the books.

J. S. SMIT (formerly Railway Commissioner to the South African Republic), called; and Examined, through an interpreter.

3187. (*Chairman.*) When did you succeed Dr. Leyds as railway commissioner?—In November, 1892.

3188. How soon did you become acquainted with the affairs of this railway?—I went into the matter from time to time as it came under my notice. As soon as it came under my notice I found out that it was nothing but humbug.

3189. When did you arrive at that conclusion?—At the commencement of 1894, more or less.

3190. In what respect did you find it a humbug?—I wish to explain to the court that this is a matter involving a huge pile of papers.

3191. Can you classify your objections? Were they financial or what?—Financial objections. I came to a conclusion as follows: After I had worried for about two years I found the contract that had been entered into with a certain Louis Warnant, and under which there had to be paid to him an amount of £7,002 11s. 11d. per mile, calculated on a distance 192½ miles; and the Government had allowed the company to go to a maximum of £9,600 per mile. When I got this suspicious contract before me I calculated that if you pay for 192½ miles at the rate of £7,002 11s. 11d. per mile, and you charge the Government £9,600 as against that, you save £500,000 on the 192 miles. Then I got the suspicion that the £500,000 capital had never been paid, and the concession said that the company had no right to enter into a loan before the £500,000 had been paid. They had already obtained a loan, so I thought they had obtained money under false pretences. Then I went to Europe. I found that out later, and I instituted a criminal action.

3192. (*Chairman.*) By the concession the amount that was to be paid to the original concessionaires was limited to £10,000?—Yes.

3193. Do you know that they received £100,000?—No, I don't believe it. I had a statement made up in Brussels from the books, and from that it appeared that they did not receive the £100,000.

3194. How much do you believe they did receive?—I believe they got £10,000 shares which were not worth anything.

3195. Did you not ever hear of their receiving £100,000 shares?—No, and it does not appear that they did so, and I do not believe it.

3196. Did you never hear that Vorster and his associates were not satisfied with the payment of £30,000 even?—No, I did not know that.

3197. Did you institute the prosecution in Brussels on your own authority, or did you consult anybody?—I consulted an advocate at the Hague, but really I did it myself.

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3198. You took the responsibility of instructing him?—Yes, I made a declaration upon which the action was instituted.

3199. Did you go to Europe with full powers to do what you thought right in the matter?—Yes.

3200. Besides these financial matters which you complained of, did you also object to the route which the railway was being laid out?—Yes.

3201. Was that upon your own survey or upon someone else's?—The survey of the contractors.

3202. Did you see the survey and make your objection to it?—Yes.

3203. Would this map assist you? Can you remember what you objected to?—It is not necessary to see the diagram. The reason why I objected was this, whilst they deviated from the direction they went along the elevation of the watershed between the Selati and the Crocodile River, by which I saw that the line would become tremendously long and cheap to build; and then Warnant's contract stipulated that if the line might appear to be shorter than the 192 miles, then nevertheless £3,500 per mile would be paid to the company for that portion of the line which they had not built, and if it was longer they would afterwards come to an agreement. When I made an investigation I found that they had made the line much longer than was necessary, therefore I refused to approve of the diagrams.

3204. Does this represent the route which you say was the right route (*shown map with black line*)?—The company had the red line surveyed, and my engineer drew that black line, but I was willing to agree to the line in between if the black line had too many natural disadvantages. The red line I positively declined to approve of.

3205. Who were Bechtle and Marais?—I believe Bechtle and Marais surveyed the line before my time, and the contract with the concessionaires was to follow the Bechtle and Marais line as closely as possible. I saw they had deviated from the route of Bechtle and Marais, and made a long line so as to get increased distance, and thereby take advantage of the Warnant contract.

3206. Is that green line there the route which was approved of before your time, and which had been surveyed by Bechtle and Marais?—I believe it was, but it had never been approved of. After the concession was entered into it was said they must follow the route as nearly as possible.

3207. But the provisions of the concession are that the line shall be built between Komati Bridge and Nelspruit, and run from thence in a northerly direction through the plains east of Lydenburg to a point near the Selati Mines, both these points to be more clearly defined by the Government in consultation with the concessionaires. Were you ever invited by the concessionaires to determine the route and the points?—No.

3208. Had they started building before your time?—The survey was made before my time.

3209. Up to what point did you approve of the plans? Was it not up to kilo. 119½?—It may be, but I do not want to declare it under oath. It was about 119, and there were two sections further on which had been surveyed, and of which I had the plans and disapproved.

3210. You had no objection as far as the Sabi River?—I do not know how far kilo. 119 would go, and unless I have all the documents before me I do not want to declare under oath whether I approved or objected as far as the Sabi.

3211. Did the company ever consult you about the route?—No.

3212. The line was not ready for working within three years, of course?—The line has never been in working order. When I objected to the plans, of course the work stopped.

3213. (*Mr. Ashmore.*) And they have never submitted any plans since, of which you have been able to approve?—No.

3214. Did they ever offer to go to arbitration upon the point of difference between you about the routes?—No, but when I went to Europe in 1895 I wrote a letter saying that I now found that the half million capital had never been paid, and that I would not enter into any negotiations unless this half million had been handed over to the company.

3215. Handed over to the company by?—Handed over by the Directors to the credit of the company. Then they wrote me a long attorney's letter containing the usual arguments. Then I made the declaration in Brussels, and I had the action instituted. Then I published a notice that the Government would not pay the interest.

3216. As a matter of fact, they have paid interest on the debentures?—Yes.

3217. But not on the shares?—No.

3218. Did they never offer to go to arbitration at all?—Not to me.

3219. (*Mr. Loveday.*) I have got here before me Mr. Smit's report for 1897. It says that the directors in Europe made an offer to go to arbitration in 1896, through their advocate, but that the Government could not accept this offer.

3220. (*Chairman.*) Do you remember that?—I do not know about it.

3221. (*Chairman.*) I understood from the witness just now that he would not have gone to arbitration with them until they paid the half million.

(*Witness.*) Yes; that is so.

(*Chairman.*) If that was your view, you would not very likely remember any offer that was made.

(*Witness.*) It is very possible, because I look upon it altogether as a criminal matter.

3222. (*Mr. Loveday.*) Then he made an alternative offer like that. (*To Witness.*) It appears in your report?—Yes; what was it?

3222. (*Mr. Loveday.*) "The pending criminal procedure had to take its course. To try to enter into friendly negotiations with the company. This would best take place under the following conditions. . . ." Then he gives a long list of things that must be done?—Yes; but this is all wrong. It is no proposition which I made to the company; it is a report which I made to the Volksraad, and I said therein as Mr. Loveday has been reading. In the first place, the criminal action must proceed, because there is fraud in the matter, and then if they complied with the list of conditions which I mentioned there, and paid back all the shares or presents to the company, we might enter into negotiations. But before that could take place the criminal action had to take place, so as to punish the guilty parties.

3224. (*Mr. Ashmore.*) At that time that you referred to, the Oppenheims had severed their connection with the company. The criminal people, the guilty people, were no longer connected with the company?—I do not know. I believe the Oppenheims are in the company still. They cheated everybody they came in contact with, even Westwood and Winby in the long run.

3225. (*Chairman.*) Was not Mr. Mooijen appointed in 1895 to find a new route, different to the one proposed by the company?—He was not really appointed. Mooijen was the Government Engineer and adviser, and when I found that the line deviated so much from the Bechtle and Marais route I sent to Mooijen, and said: "Find out if you cannot get a shorter route, deviating from the contractors' route to that of Bechtle and Marais, because the concession says they must follow it as closely as possible." Then Mooijen pointed out another route. He reported that the route indicated by the black line could be constructed. It would be very expensive, and would pass through uneven territory, and I think that he then indicated the green line as one that could be built.

3226. (*Mr. Loveday.*) Did he ever report to you on, and submit a plan of, the line that could be built, and that he proposed should be built?—Yes.

3227. Where is that report?—It is in my office.

3228. Did not Mooijen try and follow the instructions of the Volksraad, to survey along the blue line to Leydsdorp?—I do not believe Mooijen ever got the instruction from the Volksraad.

3229. No; but did not the Railway Commissioner get it?—I never gave instructions, but I believe Mr. Loveday once proposed a new line, but there was an objection.

3230. Do not you recollect that there was a Volksraad Commission, of which I was a member, that suggested that that should be the line?—Yes.

3231. Was that ever done?—No.

3232. Why?—Because the first line was the shorter, would pass through the Murchison Range, and reach the goldfields sooner, whereas the line proposed by Mr.

Loveday was a difficult one, and far away from the goldfields, and you could not get out at Leydsdorp, and it would pass across property of Mr. Loveday.

3233. (*Mr. Loveday.*) I did not know that I had property there, and it is the first time I heard of it, for I never have held property there. Does not this line of Bechtle and Marais go through worthless country infested with tsetse fly and fever, and that was the reason of the proposed deviation?—It is not true.

3234. Were you there yourself?—No; but I sent to have investigation made.

3235. Do you say there is no tsetse fly and fever there?—Yes; for short distances; but I knew the line would go up the Murchison Range, on both sides of which there are goldfields, and I also knew from experience that as soon as you start living and working in a locality where the fly is, the fly goes away. Therefore I did not see the reason for building the line to the left up to Leydsdorp beyond which I could not get. I could not cross the mountains. Therefore, I thought it best to build it to the right, and have one bridge across the Selati and one across the Sabi River, and to see where I could cross the mountains. The matter of the fly was a mere trifle.

3236. (*Chairman.*) The red line, the line that the company proposed to go by, seems to have crossed the tsetse fly district only by a more devious route than yours, so that it had both objections?—The company would not expect that I would pay £9,600 per mile for a line to escape the tsetse fly, knowing that the fly would disappear as soon as the country was opened.

3237. (*Mr. Loveday.*) Isn't the blue line the shortest line of all?—I believe so.

3238. And don't you know that Leydsdorp is the centre of the goldfields?—No. I know that the Murchison Range lies on this side of Leydsdorp more towards the line.

3239. Have you ever been there yourself?—I had the plans before me.

3240. Do your plans show where the goldfields are, or do you take the word of others for it?—No, I don't.

3241. I can assure Mr. Smit that Leydsdorp is more or less the centre of the goldfields. Would you be surprised to hear from other engineers, who gave the Commission of the Volksraad information, that the line can be built to Leydsdorp, as suggested upon this plan?—No, I am never surprised, because wonders never cease. In the plans which I had before me, with the green line, it went left of the Selati, and never touched the goldfields until it got to Leydsdorp; and then the engineers told me that there was considerable difficulty in crossing the mountain; whilst the other line went over the Selati with one bridge and the Oliphant's River with another, went between the Murchison Range, and then it got to Leydsdorp and could be continued. It is not fair to examine me on plans which Mr. Loveday has had before him every day, and which I have not seen for two years.

3242. (*Mr. Loveday.*) I have not seen the plans since then.

3243. (*Mr. Duxbury.*) Are you acquainted with the terms of the concession?—Yes.

3244. Was it not a fact that the concessionaires had to be consulted in regard to the actual route? It was not for you, as Railway Commissioner, or for the Government to dictate the actual route?—Whether the Concessionaires consulted the Government I do not know, but I know there is an article in the concession which says that the line must be constructed from Nelspruit or Komati Poort, as near as possible in the direction indicated by the survey of Bechtle and Marais. This line shows that the railway must go through the Murchison Range.

3245. I put it to you that the Government had no right to dictate the line absolutely. The route had to be decided upon in conjunction with the company?—I deny that.

3246. As a fact this line that was being built by the company followed closely the survey of Bechtle and Marais?—No.

3247. Do you say it did not follow this line of survey?—No; it deviated a lot so as to get a long and cheap line.

3248. Do you know how much longer this line was than Bechtle and Marais?—That is just the difficulty I am in—that I cannot say exactly, but it was fully 45 or 50 kilos.

3249. Would it surprise you to know that the difference was only 20 kilos?—No. It was about 24 miles, and that signifies £9,600 per mile. The diagrams are there.

3250. (*Chairman.*) You agree, Mr. Duxbury, that the green line is the Bechtle and Marais survey, and the red line is yours.

(*Mr. Duxbury.*) Yes, and the line was taken round there for the special purpose of serving the goldfields, instead of making a branch line to Leydsdorp. It would have meant going to Leydsdorp and having a branch line round.

3251. (*Chairman.*) Without going into the merits, supposing the Commissioner said "No, this is not the way to get to Leydsdorp and the Selati," have you any other remedy but arbitration?

(*Mr. Duxbury.*) No, the company and the Government must decide it.

3252. (*Chairman.*) That is the concession.

(*Mr. Duxbury.*) (*To Witness.*) In any case you approved of the plans of the line up to kilo 119?—Yes.

3253. Also the line between the points A and B—from Leydsdorp round to B?—No, I did not approve of that part. I could not approve of it because that diagram had to be examined by the engineer, and only then could I approve of it. But perhaps I could give an explanation to the Commission. There was a line proposed by a Commission, of which I believe Mr. Loveday was a member. That is the blue line. Then Mr. Klimke, the State Mining Engineer, went and he proposed the other line through the Murchison Range, and then I said "I find this line better than the other, because it passes through the goldfields." I think the diagrams had never been approved of because the survey up to that time had never been made.

3254. From what you state, I gather that you were not particularly friendly disposed towards this company?—What did I say which showed any animosity or ill-feeling?

3255. You were talking about a fraudulent contract?—I was not inimical to the company, but I could not be friendly. The company tried from beginning to end to defraud the State, of which I was an official.

3256. So in August, 1894, the company approached you to confirm plans for the construction of the line from the 119th kilo.?—It may be so.

3257. I will read the letter to you?

(*Chairman.*) What letter is that?

(*Mr. Duxbury.*) A letter which was written to the Government Commissioner on the 30th August, 1894.

(*Chairman.*) Suppose they wrote asking him to approve of certain plans and he refused?

3258. (*Mr. Duxbury.*) There is such a letter on the 30th August. (*To Witness.*) Do you know you did not reply to that letter until October—two months afterwards?—How can I remember? There were at least fifty letters between myself and the company.

3259. I will read the letter to you. I want to draw your attention to your reply. The point is that after Mr. Smit had confirmed the plans the construction proceeded to the extent of the permanent way being laid beyond kilo. 119. "He suddenly, after keeping us waiting for two months, refuses to confirm the plans at the end of that time. He not only refuses to confirm the plans for the tenth and eleventh sections, but he wanted us to tear up our rails from kilo 119 for 20 or 25 kilos." (*To Witness.*) How do you explain your refusal to sanction the plans of the tenth and eleventh sections of the line and your refusal even to approve of what you had previously approved of?—What date does the letter bear?

3260. 16th October, 1894?—The reason I objected was that as soon as I found that they deviated and were building a long line I made an investigation. I could not do it previously. I sent Mooijen, and I found they were making the line as long as possible. Then I objected.

3261. (*Chairman.*) Had you at that time come to any conclusion as to what you thought was the fraud in the contract?—It is terribly difficult for me to answer about correspondence. Since I became Railway Commissioner in November, 1892, I always had trouble with the company, and always asked them to let me see the contract. I always had some suspicion

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of fraud, and the minute in the State Secretary's office will show that I never consented to a loan, because I had never been convinced that the capital had been paid in. The first investigation was with regard to the survey of the line. There I found that there was fraud. Then I said, "I have got no proof that the capital has been paid in," and there I found a further fraud.

3262. (*Mr. Ashmore.*) Did you find out first the fraud about the capital or the fraud about the line being too long?—It is difficult for me to say, but with regard to the finance I satisfied myself as soon as I saw the figures of the contract. In the meantime I had an investigation made with regard to other matters.

3263. You found out the difference in the capital before you began to suspect the difference in the length of the line?—The two matters went pretty much together.

(*Chairman.*) Is not the point for your company this: I understand from Mr. Henderson that he is keeping an open mind about these frauds. He does not want to give an opinion about them, but he has got a very definite opinion about them. Whatever they were, he never had originally to do with them, and you say the persons you now represent had no knowledge of them?

(*Mr. Duxbury.*) Yes; the only reason I was asking these questions with reference to the route was that there were certain reports handed in which required to be explained.

(*Chairman.*) We are not here to decide the question of the route.

(*Mr. Duxbury.*) No, I do not wish to go into the thing any further than is necessary, but the replies given by Mr. Smit considerably modify what happened in the Volksraad.

(*Chairman.*) What is your case with regard to the red route?

(*Mr. Duxbury.*) We simply say there was no material difference, and that it was only a kilo. or two longer. It was referred to the Volksraad, and it was allowed to stand over for two years; and when the Volksraad Commission reported on it in 1896 they expressed regret that Mr. Smit had not carried out this survey.

(*Chairman.*) Which survey?

(*Mr. Duxbury.*) The Volksraad Commission reported on the blue route. Mr. Smit asked the Raad that another of those routes should be recommended, and they suggested that the Government should have a new line surveyed. This was never done.

(*Chairman.*) He agrees with you. He says: "Directly I discovered that this whole affair was a fraud—fraudulent in its route, fraudulent in its financing—I would have no friendly relations with the company until the £500,000 was paid." He may be right or wrong. But your case is that your company came into the thing afterwards, and is not affected by this. That may or may not be a good defence, but it seems to me to be the position of your company which is strongest.

(*Mr. Ashmore.*) Is it the plea of your company that you must make the line at least as long as the red route? Why do you take the line along the longer route?

(*Mr. Duxbury.*) Because the Volksraad decided it would be advisable to serve Lydenburg as much as possible. In the result there was only a difference of 20 kilos.

(*Mr. Ashmore.*) But it does not serve Lydenberg or go anything like near it.

3264. (*Mr. Duxbury.*) I am informed that the line, according to the original survey of Bechtle and Marais, was absolutely impracticable, and then we had to avoid the tetse fly district. (*To Witness.*) Mr. Smit, you said the company never asked for arbitration before 1897?—Not of me.

3265. There are letters addressed to the Government asking for arbitration on this point, from 26th October, 1894?—Yes.

3266. This is a letter addressed to you on the 26th October, 1894. Do you remember your report for 1894? I remember having made a report, but I don't remember the contents.

3267. And that you there mentioned this contract, that you had knowledge of this contract—this contract that you more or less erroneously described to-day?—It may be so.

(*Mr. Duxbury.*) (*To the Commission.*) I think you have the report of the Railway Commissioner for 1894 showing that Mr. Smit knew all about this contract.

3268. (*Chairman.*) (*To Witness.*) Was it your discovery what you have said was the fraudulent nature of the contract?—Yes. It is very strange to enter into a contract and say: "You must build the line for £7,002 11s. 11d.," and then to stipulate for 192½ miles. It had not been surveyed, and nobody on earth knew how long it was. That brought me to the conclusion that the capital had never been paid in.

3269. Now that we have been talking about it, can you remember when that conclusion came into your mind—was it in 1894?—I think I found the contract in 1894. It must have been about August.

(*Mr. Duxbury.*) He shows there in his report that he has made an examination of the books and accounts, and after he himself incorporates the statement in his own report, and after seeing this contract, he comes to the conclusion that the capital of £400,000 and the debentures of a million and a-half would not be enough.

(*Chairman.*) His report is upon the point as to whether the capital provided would be enough; not whether it was provided by a fraudulent contract or otherwise.

3270. (*Mr. Duxbury.*) My point is that he had full knowledge on this subject. Mr. Smit, you went home early in 1895 to inquire into the affairs of the company?—Yes.

3271. Did you ever take the trouble to go to the offices of the company to get any information?—No.

3272. You ignored the company altogether?—No, certainly not. I appointed an expert to go through the books before I went there, and after I had his report in my hands I felt convinced myself that the capital had not been paid, and that a lot of money had been paid in presents.

3273. My point is this: Did you ever take the trouble to consult any of the directors or someone acquainted with the affairs of the company?—I had no pleasure in having anything more to do with them. Whatever I did with them I did in black and white. I had not any pleasure in having luncheon and tea and drinks with them.

(*Mr. de Korte.*) On behalf of Mr. Winby, the contractor, I wish to say that he takes exception to some of the statements in that report. He is here, and I would like him to contradict them if possible. Reference has been made there to his disposing of the company's assets, and he denies that.

(*Chairman.*) We will take the denial from you. It has nothing to do with us. It has no effect on our mind any way.

This closed the proceedings at Pretoria.

SEVENTEENTH DAY.

ALBANY BUILDINGS, 47, VICTORIA STREET, WESTMINSTER, LONDON.

Thursday, 6th December, 1900.

MEMBERS OF COMMISSION :

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

SELATI RAILWAY CONCESSION (Continued).

Mr. Hume Williams, Q.C., and Mr. Ashton Cross appeared on behalf of Frederick Charles Winby and James Toleman's Executors.

Mr. Evan Thomas appeared on behalf of the Selati Railway Co.

Mr. Stephenson appeared on behalf of the Trustees for the Certificate Holders in the Selati Railway Company.

(*Mr. Hume Williams.*) I really appear, Sir, here, with my learned friend Mr. Ashton Cross, in a threefold capacity. First of all, we represent Mr. Winby, the contractor; secondly, we represent the Executors of a gentleman called Toleman. Mr. Toleman's Executors have got two judgments against Mr. Winby, one for a sum over £52,000; and, secondly, for a sum of over £29,000; and they have also got in the Transvaal possession of all the property of the Selati Railway Company—all the plant, such as it is, which the Transvaal Courts have held to belong to the contractor, and which these executors under their judgments have taken. Then, thirdly, we represent the Attorney-General under these circumstances. Mr. Toleman when he died left a large estate, and he left the whole of his residuary estate to charities, of which charities of course the Attorney-General is the guardian. All the other debts and everything outstanding under the will of Mr. Toleman have been paid, and, therefore, these two judgments and incidental claims amounting in the whole to £90,000 against Mr. Winby are really the property of the Attorney-General, because he is the only person now interested in the estate. We appear, of course, with his concurrence and with the concurrence of the solicitors to the Treasury. We are, of course, very vitally interested in Mr. Winby's interest in his contract, which is still an existing one with the railway. We, the Executors and the Attorney-General, have got a claim amounting to £90,000 for two judgments unsatisfied except to a small extent, and therefore, of course, we are very vitally interested in the position of Mr. Winby not only as to his past relations with the company, but to his future relations with the concession and the construction of the line, and any claim he may have against the Government of the Transvaal, the greater part of which, to the extent of £90,000, will go to the Attorney General, if it is recovered, for distribution amongst the charities of which he is the guardian We do not propose at this moment to ask you to allow us to take any part in the proceedings, but we thought perhaps, subject to your better judgment, it would be more desirable that you should, after you have taken some evidence and really gathered the importance of the position to the Attorney General, come to the conclusion whether you think it right that we should have any and what position in connection with this enquiry. We do not propose at this present moment to take any part unless you think it right. 6 Dec. 1900.

(*Chairman.*) The ambit of this enquiry, speaking in broad terms, is as to the validity of certain concessions which have been made, whether they were in the power of the late Transvaal Government to grant, whether they were contrary to any convention, whether the conditions of the concession have been performed, or whether they are against public interest. Unless you can assist me at present, I am afraid I am quite unaware of what jurisdiction we have as regards Mr. Winby, or Mr. Toleman's executors in any of these topics. My own view is that we might hear in very broad outline indeed the nature of Mr. Winby's claim in order that that might be mentioned in the report with no criticism as to its validity, but merely, practically, in order to enable us to state in the report that such a claim exists, and to state its broad outline. Beyond that we really have nothing to do with Mr. Winby's claim.

(*Mr. Hume Williams.*) No, we feel that, and with that we should be perfectly satisfied, if I may say so respectfully. It is perhaps a little premature now to mention it, but I only answer you because you were kind enough to as kus. When you have called such evidence as I understand you are going to call, perhaps you will see that it is a matter of some importance to us, and you will gather from theevidence what Mr. Winby's claim is, and then if you think it right that we should state it in more detail, we will be happy to do so.

(*Chairman.*) There was a third person you appeared for?

(*Mr. Hume Williams.*) For the Attorney General.

(*Mr. Stephenson.*) I represent the trustees for the certificate holders in the company.

(*Chairman.*) The bondholders?

(*Mr. Stephenson.*) No, the certificate holders.

(*Mr. C. C. Macrae.*) I appear as a member of the committee of shareholders on behalf of the bondholders. I shall not take up much time, because I have paid attention to what you have said about the ambit of the Commission, and I shall put our case in a very short was indeed.

(*Chairman.*) So far as we are concerned, we have not any witness to call.

(*Mr. C. C. Macrae.*) Then will you permit me to offer myself.

Mr. CHARLES COLLIN MACRAE, called; and Examined.

3274. (*Chairman.*) Will you make any statement you wish to make?—In 1892 I was Managing Director of the Railway Share Trust Company. There were offered to us for issue, and for placing a loan, certain bonds of the Northern Railway of the South African Republic under a concession, a copy of which I believe has been before you.

3275. What is called the Selati Railway?—Yes. I gave it its full title, but I will call it the Selati Railway for short. These bonds were brought to us and we were asked if we could place them with the public. We looked into the concession and found it full of conditions which satisfied us that it would be exceedingly difficult to procure the evidence that we should *Mr. C. C. Macrae.*

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desire that all these conditions had been complied with to the satisfaction of the Transvaal Government, and therefore we made it a condition of our placing the loan that the Government of the South African Republic should guarantee the bonds that they desired us to place, independently of the concession altogether. You will see therefore what I meant when I said I should be very short. For that purpose I went over to The Hague accompanied by Baron Oppenheim of Paris, who had brought this business to us. With regard to the Barons Oppenheim I understood that one of them was an original concessionaire of the concession from the Transvaal Government. The original concessionaires we also understood had transferred their concessions to a company called "La Compagnie Belge du Chemin de Fer du Nord de la Republique Sud Africane." That is the Northern Railway of the South African Republic. It was a Belgian company. That is the company represented by my friend Mr. Evan Thomas here. I went over to The Hague and saw the Minister Plenipotentiary of the Transvaal Government, Beelaerts van Blokland, and I stated to him what I have just mentioned to your Honourable Commission, namely, that we were not prepared to try to find this money and place these bonds if the Government did not give us a guarantee similar to that that they had shortly before given on a direct loan to themselves which had been financed through the house of Rothschild. At that time that was the only loan known in the country, and the only transaction with which the British public had had anything to do in connection with the Transvaal Government. That loan had just been issued by Rothschilds. The Transvaal credit was of course exceedingly slight and small here. I personally handed to Mr. Beelaerts van Blokland the letter that I wanted him to obtain authority from his Government to give us. It is a letter dated 19th December, 1892, from the Railway Share Trust to His Excellency Beelaerts van Blokland. It was written on our official paper, and it was in these terms: "To His Excellency Beelaerts van Blokland, Minister Plenipotentiary of the South African Republic, The Hague. Excellency,—We have been requested by the Compagnie Belge du Chemin de Fer du Nord de la Republique Sud Africaine to make an issue in London of £500,000 Bonds of that company, which, as we understand, has been authorised by your Government. These bonds appear to be issued in pursuance of a resolution of the National Assembly dated the 15th July, 1891, Article 919. We have before us a certified translation in French of this concession. In order to avoid any uncertainty as to the translation correctly representing the original and as to the meaning thereof, we shall be obliged if, before we finally accept the position of making the issue, your Excellency will write us a letter to the effect that we are right in assuming that the principal and interest of these Bonds are guaranteed by the Government of the South African Republic free from all taxes or imposts of that State, and independent of any default of the company in performing the terms of the concession. We have the honour to enclose you a copy of the prospectus we are proposing to issue, and in which we should like to insert the letter with which we now request your Excellency to furnish us. We beg to remain your obedient servants, The Railway Share Trust and Agency Company, Limited." That is signed by myself as Managing Director. On the same day I handed him another letter also addressed to His Excellency in these terms: "Excellency,—Referring to the conversation which I had the honour to have with you to-day with reference to the Selati Railway, I am instructed by the company which I represent, The Railway Share Trust and Agency Company, Limited, of London, to request your Excellency to be good enough to communicate by telegraph with the Minister for the Interior of the South African Republic in the following form: 'Parties are prepared immediately to make issue of £500,000 Selati Railway Bonds. Believe success assured. Before issue parties request me to certify on your authority that your Government, having before it the statutes and transactions of the company, recognises the company as being owners of the concession, and the concession as valid and subsisting.' For the information of my company will you kindly confirm the fact that the guarantee of the Government will accrue on the different instalments payable by the subscribers of the bonds from the date on which those instalments are paid?" That was also signed by myself. That was on the 19th December.

3276. The last one is dated in my copy the 23rd?—Then the 23rd is the right date.

3277. This refers to a conversation you had with the plenipotentiary. Does this letter, roughly speaking, summarise what had passed between you?—Yes, that is so. Of course you will understand in these matters a great deal had to be done in the way of negotiation, and you will observe the peculiar wording of my first letter: "In order to avoid any uncertainty as to the translation correctly representing the original and as to the meaning thereof." That was to do what the Chinese call save face, and not to tell him that the credit of his Government was not good enough. You are obliged to be diplomatic.

3278. I fully appreciate that?—But we made it very plain to the Minister what the real thing was, and this letter was written and approved by him before I delivered it to him. On the 20th January I received from the Minister a letter, the original of which I will hand in because that is the real charter of the bondholders. This was addressed to us. "Legation de la Republique Sud-Africaine, The Hague, 20th January, 1893. To The Railway Share Trust and Agency Company, Limited, London. Gentlemen,—I have the honour to acknowledge the receipt of your letter of the 19th December, in which you inform me of a proposed issue by your firm of £500,000 Bonds of the Compagnie Franco-Belge du Chemin de Fer du Nord de la Republique Sud-Africaine. In reply to your letter I have to state that the issue of £500,000 bonds of the said company, bearing 4 per cent. interest, has been authorised by the Government of the South African Republic, and that you are quite right in assuming that the principal and interest of these bonds are guaranteed by the Government of the South African Republic, free from all taxes or imposts of the Republic and independent of any default of the company in performing the terms of the concession." That I acknowledged by a formal letter which I need not trouble you by putting on your file. There was a formal letter acknowledging it. Then there is a letter from Beelaerts van Blokland to me, dated the 20th January, 1893, in which he says: "I have the pleasure in certifying that my Government recognises the concession of the Selati Railway as perfectly valid, and the Franco-Belgian Company of the Northern Railway of the South African Republic is the proprietor of this concession." On that we made the issue. It was placed and the money was in due course paid over to the Franco-Belgian Company, and by them paid out against engineers' certificates to contractors for work done.

3279. What was the issue?—Do you mean what was the price of the issue?

3280. Yes?—The price of the issue was £77, and it was issued in January, 1893. I have a letter authorising the rate. That was all fixed with the Transvaal Government.

3281. Was there anything off the £77 for commissions?—Yes, certainly.

3282. How much?—There was the issuing commission to our house, which was 1 per cent., and in addition to that there were the expenses of underwriting. The total difference was 7 points—the difference between 70 and 77.

3283. Was it 6 per cent. underwriting commission?—There was 1 per cent. for the commission of the issuing house, 5 per cent. underwriting commission, and 1 per cent. for expenses. There are two letters with reference to that. The first one is: "Government approves issue at the rate of 70 minimum net." Then it was confirmed in January, 1893: "I have the honour to confirm my telegram."

3284. There the minimum rate is 77?—Minimum rate of issue, 77. One was net, and the other was not. The 70 was to be minimum net to the Government, and they approved provided the minimum rate of issue was 77 to the public. Mr. Evan Thomas tells me the letter of the 25th August which I referred to was a letter addressed to the Franco-Belgian Company, and the latter one which deals with the £77 was addressed to us.

3285. What inference do you draw from that?—I only draw the inference that the Government authorised an issue at 77, they themselves receiving 70, or, rather, the company to receive 70. The minimum price net to the company was to be 70, and the issue price was to be 77.

3286. I do not feel quite satisfied about that approval. The approval is for a minimum rate of 77?—That is the issue to the public.

3287. So you say, or, rather, so Mr. Evan Thomas says?—I think it would be better, perhaps, if Mr. Evan Thomas would leave me to explain this.

3288. I am going to put it at once to you. I daresay

it is a fallacy, but I should like it to be met. I should have read: "Government approves, provided minimum rate 77" to mean that that was the *bonâ-fide* rate and the genuine rate?—I agree with you if that letter stood by itself, that is the way I should read it, but never for a moment had there been any misunderstanding about this with the Government. I think I can clear up the point. The prospectus in which it is stated it was to be issued at 77 had been approved by Mr. Beelaerts van Blokland, and I can put in now a letter on our file that I was looking at last night in which we gave an account to Mr. Beelaerts van Blokland of the way in which the money received had been dealt with. The only point that was made by Mr. Beelaerts van Blokland on that was that we had deducted certain sums from the net price—the £384,000. The actual amount realised by the issue was £384,891 16s. 4d. It is convenient that you should have that figure at once. That was paid over to myself and Mr. Evan Thomas, who were the trustees for the debenture holders named for that first issue, and by us the whole of that was paid out against engineers' certificates for work done by the contractors and the other expenses authorised by the Franco-Belgian Company, whose money it was. It was all duly accounted for, and the accounts were afterwards passed, I understood, by the Transvaal Government in the books of the Franco-Belgian Company; but, of course, with that as the issuing house we had nothing whatever to do. The secretary of the Share Trust Company will hand me that letter in a few moments, but I was saying the only point ever raised by Mr. Beelaerts van Blokland about the money was one which he was mistaken in. We had allowed in the prospectus, as you will see, in the ordinary way for payment in full. The loan was in the ordinary way to be paid by instalments, but persons choosing to pay the full in advance might pay and have a discount. That is the everyday method. A good many had availed themselves of that, and paid up their £100 straight away, and had, therefore, received a discount, and the only question that Beelaerts van Blokland raised was he did not appreciate that at first, and he said so many bonds subscribed for ought to raise so much, and I explained to him that it was in consequence of the discount allowed on payments made in advance. Perhaps you will allow me to hand that letter in later on when that is found. Now in August, 1894, after the expenditure of this £380,000 had produced results in the way we were told—of course, we were in constant touch, and I was myself one of the trustees who would only pay the money out against the certificate of the engineers for work done—we were informed of the progress being made in the building of this railway, and as far as we could secure it we insured that the whole of it should be spent in the construction of the railway and nothing else. When that money was exhausted, and so much of the railway had been completed as certified to us, the Franco-Belgian Company came to us again asking us to place a further loan for the further capital for proceeding with the railway, and this time it was to be £1,000,000 sterling. As a matter of fact, under the terms of the concession the company would not have been authorised, without a modification of those terms, to have issued so much as that at this period, because they were only allowed to issue bonds for so much a mile, and I think only for 25 miles in advance. The Transvaal Government was very anxious, however, at that time, as stated to us by Beelaerts van Blokland, and all the letters shown to us by the company that they were receiving from the Transvaal, that the work should be proceeded with, and, in fact, they did authorise that the fresh loan should be made for £1,000,000, although under the terms of the concession so much at that time could not have been issued. I will not weary you by putting in a lot of documents about that.

3289. There was a sanction by the Raad?—There was. To save time, I may state that all those sort of technical points were most fully and minutely gone into by the Secretary of the Stock Exchange, Sir Henry Burdett. He was a very vigilant watchdog, if I may use that expression, on all prospectuses coming out. He was a trained member of the Bar, and he had a highly-trained intellect. I was refreshing my memory by going over these matters of eight years ago, and I was perfectly astounded to see the way in which he took what lawyers call requisitions on these matters, and wanted the most technical proof. Amongst other things we had to produce the resolutions certified, to the satisfaction of himself and his legal advisers, of the Raad sanctioning this increased issue. Every point you can conceive of almost in that prospectus that required technically to be proved was proved to the Stock Exchange Committee. When we were asked to make this issue the credit of the Government had very much improved, because the first loan issued by us was a great success. It was subscribed many times over.

3290. The second was subscribed many times over?—The first loan was subscribed many times over, and it had been a great success, and the bonds went to a premium, and the credit of the Transvaal Government was very much improved. So when the second loan came out naturally they wanted a higher price, and after many negotiations it was fixed at 93½ with Beelaerts van Blokland. Previous to that, on the 3rd August, 1894, I wrote from the Railway Share Trust and Agency Company to His Excellency Beelaerts van Blokland:—"Excellency,—I have the honour to inform you that we have been requested to make an issue of £1,000,000 Bonds of the Compagnie Franco-Belge du Chemin de Fer du Nord de la Republique Sud-Africaine. We understand that these bonds have the same rights and stand on precisely the same footing as the £500,000 bonds of the above-named company issued by us in January, 1893, and we shall be pleased to receive your Excellency's confirmation to the above effect in the form (if it so please your Excellency) of a letter addressed to us in terms substantially identical with those of the letter from your Excellency, copy of which is set out in the prospectus on which the former issue was made. Herewith I forward a draft of the proposed prospectus for the new issue of £1,000,000 bonds, in which I have altered in red ink the portions of the previous prospectus requiring change, leaving the other statements in the prospectus to be repeated in the new one. Having heard from Baron Oppenheim that he has an appointment to see your Excellency on the subject of this issue to-morrow evening, I have forwarded this letter to him, requesting him to deliver it in person to your Excellency." On the 8th August, 1894, I received a letter which was in the precise terms *mutatis mutandis* as regards figures as the previous one from the Minister stating that this issue was to be independent of any default of the company, and that letter is set out in the prospectus for that loan of £1,000,000. The only point in which it differed from the previous letter was at the end of it:—'I have received instructions from my Government that the proceeds of this issue shall be deposited in the name of myself as Commissioner of the South African Republic and of the company." So they were substituted as trustees of that issue for myself and Mr. Evan Thomas. Mr. Beerlaerts van Blokland was himself a trustee for the debenture holders.

3291. The £500,000 means the £384,000, I suppose?—Yes, that is quite right. It is called £500,000. This second loan produced at the net amount £934,092 18s.

3292. Was that well received?—Yes, very well received. That was paid to the joint account of the Commissioners in Europe and the company.

3293. How was that met?—That was subscribed many times over. I may say in the same way at this time the Transvaal Government were very anxious indeed that we should let the Dutchmen in. They had very close relations, as you have probably learned elsewhere, with the Netherlands Railway. We had nothing whatever to do with that, but the bankers of that and the bankers of the Government in Amsterdam were Messrs. Labouchere, Oyens, and Co., and they were exceedingly anxious we should reserve a portion of this new loan for Holland.

3294. And did you?—I will read the letter. Mr. Oyens came over to see me, and we had various negotiations. They wanted a great deal more than we would give them. On the 9th August I addressed this letter to Mr. Beelaerts van Blokland:—"Excellency,—I have received your Excellency's letter, dated, Oosterbeck, 8th August, for insertion in the prospectus of the proposed issue of £1,000,000 Bonds of the Northern Railway of the South African Republic." That is the letter you have just had read. "I desire to thank your Excellency for your courtesy in so promptly complying with our request to be favoured with this letter, and trust that the issue may be as successful as the last. As desired by your Excellency, I enclose three copies of the prospectus which we propose issuing. The advertisement will appear on Monday next. We do not anticipate any difficulty in placing the entire issue here, but we have placed £100,000 at the disposal of Messrs. Labouchere, Oyens, and Co., which we hope may be satisfactory to your Excellency, as it is mainly with a view to, as we believe, comply with a natural desire on the part of the Government of the South African Republic that their countrymen should participate in this issue that we have made this concession." That is the letter I wrote, and the consequence was that Messrs. Labouchere, Oyens, and Co. took £100,000 of the loan, and that was placed in Amsterdam.

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3295. What was their commission?—That I do not know at all.

3296. (*Mr. Loveday.*) Can you give us the expense of underwriting this loan?—Yes, I can.

3297. (*Chairman.*) Generally the expenses of this issue?—£934,000 was the issue, as I have told you. That was the proceeds at 93½, less commission. The net the company received was £860,000, the difference being in the same way accounted for. In this case it was nothing but underwriting and the commission at 1 per cent. of the issuing house and expenses.

3298. Was it the same as the last?—Yes—1 per cent., 5 per cent., and 1 per cent.

3299. This was in August, 1894?—Yes.

3300. Were the Barons Oppenheim still the directors of the company then?—They were the directors of the French company.

3301. That is the company?—Yes, that is right.

3302. Who underwrote?—There was a syndicate formed for the original business when it was brought to us who underwrote the whole amount, and the Barons Oppenheim had a very considerable share in that syndicate. Of course, I had nothing to do with that so long as I was satisfied with the names of the people who underwrote, as the issuing house, but they had a very large amount reserved for them—I think about half of it—for themselves and their French and Parisian group, and the other members of the underwriting were all financiers in the City—half a dozen of the large capitalists there.

3303. The underwriting commission was the same in 1894, when the greatly-increased credit of the Transvaal Government was apparent?—Yes; that is so. Of course, it was an exceedingly profitable thing to have, but they made it a stipulation. As I have told you, at the beginning the credit of the Transvaal Government when this thing was first brought to us was exceedingly poor, and it was very doubtful whether a loan of this kind could be floated at all, so when these gentlemen consented to underwrite for 5 per cent. it was understood that this was a trial issue, and they should be allowed to underwrite at least one more issue on the same terms as they underwrote the first one. Then it was understood, after that, that the company was to be at liberty to make entirely fresh terms, because it was believed a fresh issue would be required after that one million. It was known that one million and a half would not be enough for the railway, but for reasons I will tell you shortly, the whole work was suspended.

3304. It was the same syndicate which underwrote both issues?—Yes.

3305. Oppenheims having the same interest in that syndicate?—Yes.

3306. A large one in each case?—Yes; it was exceedingly profitable.

3307. How much do you think the Oppenheims had?—Forty-two per cent. I told you it was about half, but it was 42 per cent. Mr. Evan Thomas tells me, and he is the chairman of the company.

3308. Between whom was the arrangement or understanding made to which you have referred?—The business was brought to us in the first instance by the gentleman sitting on my right, Mr. Evan Thomas, who introduced the Barons Oppenheim, and brought the whole business to us. We in the usual way looked into these things. I may say that 99 out of 100 that are brought to us in that way are no good; one has the trouble of looking into them, and nothing is done; but this did look as if there was something in it, provided there were considerable modifications made in the conditions under which it was brought. I am reminded by Captain Pavy that originally what we were asked to do was to make a loan to the contractors. Captain Pavy is quite correct on a point of detail. The original requisition to us through Mr. Evan Thomas was not to make an issue, but to make a loan to the contractors who had been employed, and that led to the making of the issue. We came to the conclusion that we would make it, provided always that it was made an absolute guarantee of the Government, independent of the concession. I had studied this concession, which was in French, with great particularity, and I saw it bristled with questions with which we were not going to be concerned. Therefore, unless the Government was prepared to give its clean guarantee, we would leave it alone. When we had determined to take it, if we could get that condition, it was then necessary also to see that the thing should be a success, and for this reason this syndicate was formed, and the formation of the syndicate was done in this way: The names were brought to me and submitted to me by Mr. Evan Thomas and the Barons Oppenheim, and we ourselves invited the capitalists in the City who took a leading part. Would you like me to give their names? They are people of very high importance.

3309. No; I do not think it is material?—I am quite prepared to do so. They were, at any rate, quite in the first rank, and friends of our own. We consequently made up that syndicate. As I tell you, in the first instance the 5 per cent they were to receive was no very great thing, as things go in the City. It was the ordinary thing. I say frankly with regard to the second issue, having regard to the great success the first loan had been, it was a commission considerably in excess of what we should have got, but it was part of the understanding.

3310. What was the understanding, and between whom was it made?—As far as I was personally concerned in getting the English capitalists, it was one of the terms on which I asked them to come in. I said, Will you underwrite on the terms of the 5 per cent. now and on a second issue which follows this one?

3311. Have you any document as to that?—No; I have no document. I was looking for the documents last night, and there are no documents on that; but that is the effect of it.

3312. So far as your underwriting part of the business, it was done in that way?—Yes; it was done in that way. The other I know nothing about, I accepted it.

3313. So far as you are concerned, that is the totality of the understanding?—Yes; all I know as regards the Oppenheims is that their names were given to me, and it was said they would underwrite 42 per cent.

3314. You are quite clear nothing else was done?—Not so far as we were concerned.

3315. I want you to be quite sure about that—that nothing else was done?—I know you will not think I am trying to keep anything back.

3316. Certainly not?—Therefore, if you have anything in your mind, would you put it to me, because, so far as I know, nothing else was done.

3317. What I mean is this: That was a domestic arrangement between yourself and your own underwriters, which did not result in any communication to the Transvaal Government?—No; that is quite true.

3318. The Transvaal Government was going to have the second issue on its better credit, and without knowing that 5 per cent. pursuant to a former understanding had been accorded to the underwriters?—In the way you state it that is so, but they did know this most distinctly. They did know instead of getting 93½ on the loan they were only to get 86. That they agreed to and approved of.

3319. Where is that?—That I can show you. Perhaps you would allow the letters to be put in later. Apart from the mere production of the documents, I have not the smallest doubt about all this in my own mind, and I will give you a fact that will confirm it. Mr. Beelaerts van Blokland became Trustee for the Debenture holders of that second issue, and as such received, of course, the proceeds of it, and only the net proceeds, that is to say, £86 instead of £93½. Here is the document, and, if I may, I will read it. It is translated from the Dutch, and it is signed by Dr. Leyds. It is a Resolution of the Executive Council of the Government of the South African Republic dated 31st July, 1894:—"Present: His Excellency S. J. P. Kruger, President of State, the Hon. J. M. A. Wolmarans, the Hon. J. H. M. Kock, Keeper of Minutes, and Dr. W. J. Leyds, Secretary of State. For consideration Minute R 7598/92, containing a request from the Directors of the French-Belgian Company of the Northern Railway of the South African Republic to issue a further loan of one million pounds sterling. The Executive Council, after taking into consideration the correspondence carried on and the opinion of the Government Commissioner, resolved to direct the Secretary of State to send the following telegram to the Minister, Mr. Beelaerts van Blokland: 'You may sanction Selati obligations issue one million, minimum 86 net.'" Then after that issue was made, and was a success again, and we understood that the works went on, and then the coupons were regularly paid through Messrs. Barclay, Bevan and Company, who had been appointed the bankers in London of the French company. They were regularly paid up to January, 1897.

3320. (*Mr. Ashmore.*) That is the debentures, not the shares?—I am only speaking of the debentures. My per-

sonal connection with the thing had then ceased. I was no longer trustee for the debenture holders. Mr. Beelaerts van Blokland and Baron Oppenheim were the trustees of the second issue, and, of course, the first issue had been exhausted and the money all paid up, so that personally we had ceased to have any connection with this except for the responsibility attaching to us as an issuing house in connection with these two issues; and that has been so from that time forward.

3321. (*Chairman.*) Did you not receive the interest still?—No, not from the time of the second issue—we received nothing. They had chosen to appoint their own Commissioner, Mr. Beelaerts van Blokland, and Baron Oppenheim to be the trustees, and it was paid into their account, and we had nothing to do with it.

3322. Of both issues?—The first issue. I was a co-trustee with Mr. Evan Thomas, and in that case I received all the money, and it was only paid out against engineering certificates for work done and so on.

3323. As to that first issue you would still be the conduit-pipe through whom your beneficiaries would receive the interest?—No, they were bearer bonds, and they were notified in the usual way to be paid at the bankers.

3324. They looked after themselves, so to speak?—Yes. We never received them. Then after that we understood that questions had arisen. I heard from Mr. Evan Thomas continually what was going on, and I understood questions had arisen with regard to the shares and with regard to the liability of the Government upon the shares. We had nothing whatever to do with that, but in consequence of those questions the Government became irregular in its payments, and did not provide the money at the bankers, Messrs. Barclay and Co., to meet the coupons as they fell due, and from that time onwards the annual payments were made by means of notifications in the papers that coupons would be purchased *sans recourse* by Williams, Deacon and Co., who, I believe were instructed by Messrs. Labouchere and Oyens, on behalf of the Transvaal Government. So, in a roundabout and circuitous way, the coupons were regularly paid until the last one, when default was first made.

3325. Since the war?—Yes; funny enough, they actually paid after the war had commenced. They paid the coupon that fell due on the 1st of January. The only coupon that has been defaulted upon is the July one.

3326. Since January, 1897, till January, 1899, the debenture interest has been paid, but irregularly, in the sense of its having been paid through a different channel to what was usual?—Yes, that is exactly what I was trying to explain.

(*Mr. Evan Thomas.*) May I explain why the company under the concession was bound, as long as it had money, to advance money to the Government for the debenture interest and the share interest. When the row began between the company and the Government as they would not pay the share interest, I declined to sign the cheque for the debenture interest, but up to 1897 the company had always paid it out according to the concession out of the money it had in hand. It was only after 1897, when we refused to pay, that the Government put it into the hands of Williams, Deacon and Co.

(*Witness.*) That is quite right. I do not think I need say anything else except just this, which I think is of some importance—naturally we, as an issuing house *in this*, as in connection with any other issue, should feel ourselves under a responsibility to protect people as much as possible, and when we found there was a likelihood of any irregularity in the payment, we determined to address direct the Government in Pretoria. I have put it on the file, and I will hand you in a letter which I put in, because it summarises all I have told you, and shows that the whole of what I have stated was brought to the notice of the Government in Pretoria. We addressed them a letter on the 23rd July, 1896, which is addressed to His Honour the President, and the Honourable Members of the Executive Council, Pretoria, in which we stated: "Shortly before the last coupon on the bonds of this railway fell due, our attention was drawn to the fact that the usual notice of payment of the coupons had not been advertised, and on enquiry we found that no funds had been provided for the purpose. As the issuing house of these bonds, we thereupon addressed ourselves both to Mr. Beelaerts van Blokland, as representing your Government in Europe, and to the representatives in London of the Compagnie Franco-Belge du Chemin de Fer du Nord de la Republique Sud-Africaine. From them we ascertained that no funds had been provided by your Government to meet the coupons on the bonds falling due."

3327. (*Chairman.*) What are you seeking to establish from this?—I do not know that you really require it. The only point I was reading this letter for was that in this letter to the Government we set out in full the documents that had been signed by Mr. Beelaerts van Blokland, which I have referred to in the prospectus, and the communications of the terms on which we had taken this loan, namely, that it was to be independent of any question, and also setting out that he recognised that the concession was valid, and subsisting at the time. We ended up in this way: "These letters clearly and in unmistakable terms pledge your Government to pay the coupons on the bonds as and when due, and irrespective of any default of the company in performing the terms of the concession: and this being so, we would respectfully suggest that the matter of the interest on the bonds be kept entirely distinct from that of the shares, and that the Government will be pleased to give directions and take such steps in future so as to ensure the due payment of the interest on the bonds as it falls due. We cannot too strongly urge the importance to the credit of your State of this being done, and if our services can in any way be of use to you in this matter or in any other, we willingly place ourselves unreservedly at your disposal."

3328. I quite follow that?—Then in due course, after a long delay, we received a letter, signed by the Under-Secretary, in Dutch. It is signed by the Under-Secretary of Foreign Affairs, C. A. Boeschoten. He acknowledges our letter, and does not challenge any of the statements in it. He says, "I have the honour to inform you that the delay in the payment of the interest on the bonds of the said railway company is owing to a misunderstanding and neglect on the part of the last named, but orders have now been given to effect the payment." So that all the statements are accepted.

3329. (*Mr. Ashmore.*) What is the date of that?—The date of that is the 28th of September, 1896.

3330. (*Chairman.*) It really is only a recapitulation of what you considered the strength of your position that you had looked from first to last to the credit of the Transvaal Government, and that your position was not involved in any infirmity of the concession?—Yes.

3331. You say that letter to the Foreign Secretary is an acceptance of that position?—Yes, sir. You have correctly stated the purpose for which I put that forward. Now, unless you have any question to ask me that will be the whole of my statement. I would merely say that when it was notified through the public press that your Commission had been formed, the bond holders of this railway, the whole one million and a half, summoned a meeting by Captain Pavy, as Chairman of the Railway Share Trust, and they passed a resolution appointing a committee of bondholders, and ultimately I was appointed chairman of that committee, and at the request of that committee you having announced that a sitting would be held here to take any evidence that was desired on the subject, I was deputed and requested to make a statement before you, which I have done to-day. That is the position. You have stated in the clearest way the position which the bondholders take here, that this is an absolute obligation of the Government of the South African Republic, irrespective of the concession and independent of it, and that we are in no way concerned with that. We took it on the statement that it was recognised to be a valid and subsisting concession at the time the loans were made, and the point of that in my mind was that there were certain stipulations which, if you study the concession, you will see with regard to the share capital, and questions of that kind, which, if they had not been complied with, would have made the concession forfeit at that period. Inasmuch as I was not in a position to obtain the evidence on those questions, I insisted that the Government should state that it was then valid and subsisting, and had not been forfeited by anything which had occurred or any default of the concessionaire. That is point No. 1. Then the second one was that there should be also a guarantee of the Government, independent of any future default they might make. Therefore the loan was to be, and that is why it was accepted in the City and became such a success, on all fours as regards the obligation of the Government with the loan, which had been issued by the Rothschild house before with the further security of the mortgage upon this railway.

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Perhaps I had better put in the bonds, because that, of course, is most important.

3332. I believe we have got one. There is some Dutch word meaning "directly," is there not, on the bond?—*This* is the form of the bond (*producing*). The whole of the form of this bond, which was prepared by us, was submitted to Mr. Beelaerts van Blokland, and he kept it for a long time. It was a long time before these bonds were finally given. The subscribers for the loan in the ordinary way received from us, the issuing house, mere scrip certificates entitling them to what is called the definitive bond when issued. Before these bonds came to be issued, two very important formalities had to be gone through; one was to pass the ordeal of the Stock Exchange, which makes the most minute and searching enquiries, especially when Sir Henry Burdett was there. I was surprised, in looking through the files last night, to see the way in which we were requisitioned, and the evidence which we had to obtain. However, we got it. Then the form of this bond was the subject of continual correspondence and communication with Mr. Beelaerts van Blokland, representing his Government, and they, no doubt, had all been submitted to the Government, because ultimately every one of these bonds was signed by Beelaerts van Blokland himself. The word you referred to, "directly," appears to be this: they made a special stipulation that the bonds should be in Dutch as well as in French and English, and the words in English are here, "Portion of a loan 4 per cent. Government Guarantee Bond; issue of £500,000 in 5,000 bonds of £100 each. Portion of a loan authorised and guaranteed principal and interest, by the direct obligation of the Government of the South African Republic." They insisted that the Dutch word should come above the English word. Here are the Dutch words, but I do not profess to be able to read them.

3333. We are quite familiar with it, but if it is not inconvenient to you, we should like to have the original bonds. We have the blank form of the first. Is it the same in the first as in the second?—It is only an alteration of a few words with regard to the figures.

3334. It is only a change *mutatis mutandis*?—Yes. You may as well have one of these. They are only £100 each, if the worst comes to the worst.

3335. Had you any reason other than the concession and its form present to your mind for obtaining the bond in that shape?—There were stipulations in that concession which reading it through I could see that unless they were complied with, the concession was liable to be forfeited. I have referred to one, the share capital. It was obvious that they said that the share capital ought to be paid up—500,000 sovereigns. I was not going to concern myself with that question. It was a matter for the Government.

(*Mr. Stephenson.*) This is a question affecting the share capital and you are not representing the shareholders here.

(*Chairman.*) No, but it refers to the debentures too.

(*Witness.*) I am not casting any doubt upon it, but the Chairman asked me a question. That was the thing which was in my mind, and I said to myself, "The Government have got to be satisfied upon this point, and how am I to get this proved?" I had such a thing as that in my mind, although I had no knowledge of the facts, and I was assured over and over again and formal proof was brought to Captain Pavy and myself that the whole of that money had been paid. We received formal proof, and a notarial certificate was given that the whole £500,000 had been paid, but it was to avoid being involved in any question of that kind which I foresaw might possibly be raised. I am not keeping anything back. I had no knowledge of any kind, but I had a natural feeling as a man of business that these were questions which might possibly be raised. Captain Pavy gives another reason. He said it was a foreign company, and we had no control over it. Therefore we preferred to have the guarantee of the Government direct; but really what was in my mind was this: there were a number of these sort of questions, and I felt that the only way it would be possible for anybody to satisfy any person looking into it would be that we should have had to set out all these terms in the prospectus. That would have made it a conditional loan, and we should have to give evidence on the face of the prospectus that all these conditions had been complied with. That being so, I felt it was impossible to deal with it in that way, and the only way to deal with it was to get a clean undertaking on the part of the Government.

3336. Does that answer apply to what was passing in your mind during the time of the first issue?—Yes, only the first issue.

3337. What happened with regard to the second issue?—I was glad to get what I had got in the previous one, because nothing could be better.

3338. Had nothing occurred between the first and the second issue which suggested the need for a strong form of bond?—No; I assure you not—not between the first and the second issue. It was not till long afterwards, when these questions of the default arose, that I heard these questions were beginning to arise on the very points I had apprehended.

3339. As the issuing house in August, 1894, had you kept yourself *au fait* with the transactions of the railway?—I had kept myself *au fait* with the transactions of the railway all through.

3340. And its relation with the Government?—And so far as I could learn them, its relations with the Government.

3341. Did not you hear of any growing suspicion in the minds of the Transvaal Government that they had not been honestly dealt with by the Oppenheims?—No. I will tell you precisely what I did know—all that I have ever heard of until quite a recent time. I cannot tell you at what time exactly it was that these things came to my knowledge, because these sort of things grow, but I can say positively nothing of the kind had been suggested or intimated to me before the second issue. Up to that time we believed everything was going most satisfactorily. I was keeping myself closely informed as to the progress of the railroad, and it was stated that it was being constructed in an effective way, and I heard no suggestion of suspision. Then later on—the exact date I cannot give—I heard first of all that trouble had arisen that the Government was interfering with the contractors, and their engineer refusing to acknowledge some work which had been done by the contractors. The first suspicion I heard of anything wrong was that they had refused to outhorise work that had been done in the way of embankments by the contractors. It was explained to me, when I asked the meaning of all this, that the trouble that had arisen was this—and from that day to this I can only tell you what was then explained to me. I do not know whether it is right or well-founded, but it has always been the information I received. As I knew, under the concession the railway had really been only most roughly surveyed at the time that the concession was granted, and the final line of it was to be arranged between the Government through its engineers and the concessionaires or the people in whom the concession subsequently became vested. I was told that the railway, having proceeded to a certain point, beyond that point the line as originally drawn and agreed to between the parties, had by consent of the Commissioner of Railways for the Transvaal Republic for the time being and the Government, been diverted in order to avoid a bad bit of country, and it had been made to go in a bend instead of going straight.

3342. I will take your answer one way or the other. Before this issue in August, 1894, had you any communication with the Transvaal Government?—No, none.

3343. Had you any communication with the company?—I think I had continually. I must have had, undoubtedly.

3344. Did the company give you any information as to any controversy between themselves and the Government?—No; certainly not—none. The company have never given me any formal communication of that kind.

3345. Who was your co-trustee?—Mr. Evan Thomas.

3346. In the second issue?—I was not in it at all. I had gone out of it altogether after the second issue.

3347. Were the trustees of the second issue Mr. Thomas and Baron Oppenheim?—Not Mr. Thomas. Beelaerts van Blokland and Baron Oppenheim were the trustees. We had gone out of it altogether after that second issue.

3348. Before the second issue?—No, after the second issue.

3349. You were not trustees of that?—No.

3350. But your house was the issuing house of the second issue?—Yes; and for that reason we took an interest.

3351. Are you perfectly clear that the company had

never brought to your notice any controversy existing at that date between them and the Government?—Yes, I am perfectly certain that at the time of the second issue no question had ever been brought to my notice or our notice as a company of any controversy between the company and the Government. I am quite certain of that.

3352. Did you ever hear from any source of such a controversy?—I did subsequently—later on.

3353. But at that time?—No, not at that time.

3354. Did you ever hear that an accountant had been sent by the Transvaal?—I did certainly, but long after—at least, he went to Brussels. I was told an accountant had gone and passed the books, and that the accounts had all been passed by the Government.

3355. (*Mr. Loveday.*) Was that subsequent?—Yes.

3356. (*Chairman.*) An accountant on whose behalf?—On behalf of the Transvaal Government, and I was told that he had passed the accounts—that they had been accepted.

3357. If a correspondence exists between the representatives of the company and the representatives of the Transvaal Government before August, 1894, raising plainly the points of controversy between them, you were in August, 1894, wholly ignorant of them?—That is so. I never had any knowledge of it.

3358. When did you first become aware of such controversy?—Of course, as I told you just now, it was impossible for me to fix a date.

3359. About when?—We are going back to 1894, and I really could not tell you. I will tell you when I think it must have been. I get at the date in this way—it was about the time that the shares were sold in London, because that is what raised it. They came and asked us, and we said we would not have anything to do with the shares. That was what raised the question really.

3360. That was at the end of 1894?—I am told it was the 6th February, 1895. It was the first I heard, because it was in consequence of that that I began to make inquiries. I said, "I always fought shy of those shares. Let me find out how the thing stands"; and that led to inquiries. I did hear then for the first time of these pending questions, and I need scarcely tell you I would have nothing further to do with it.

3361. I do not say they were unusual precautions?—They were unusual. You are justified in using the term.

3362. At any rate, the very close precautions you took on behalf of the people you were representing were dictated, as you say, by the conditions on the face of the concession and by no other reason?—Certainly. You know what sort of training I have had, and it makes one naturally very careful in reading documents. It was my own suggestion, and without any ground whatever for believing they had not been complied with except that it was the sort of thing I saw questions might arise upon. I did not know who these gentlemen were. They were stated to be two young men who had come into a large fortune, and they were well certified—I mean the Barons Oppenheim. I was not going to be concerned with whether or not they could find half a million sterling. That was really the thing that was in my mind.

(*Mr. Hume Williams.*) Before you allow any evidence to be given with reference to the position of the contractor you would probably like me to give you shortly a few material dates, which I could do in a quarter of an hour, and then, subject to what you sanction, we propose to call a couple of witnesses before you to give you what you specified you would like to have, namely, the broad outline of the present position of the contractor with regard to the concession.

(*Chairman.*) How long would that take?

(*Mr. Hume Williams.*) My opening, if I may so call it, would, I think, take a quarter of an hour, but the evidence might take somewhat longer—I should think a couple of hours.

(*Chairman.*) We do not want to have it in any detail. In fact, I doubt whether we want any evidence at all upon this. I think the statement from you of what your clients' position is would be sufficient. The correctness or incorrectness of it we have absolutely nothing to do with, and we intend to pronounce no decision upon it in our report at all, but I think it may assist the Government that they should know that such a claim exists, and its outline. I think we might almost take it from you.

(*Mr. Ashton Cross.*) A statutory declaration has been made already verifying it, and probably, therefore, you would be justified in taking it on my friend's opening.

Mr. C. C. Macrae.

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(*Mr. Evan Thomas.*) May I say one word with regard to the debenture syndicate? I was a director, and Mr. Beelaerts van Blokland negotiated with the syndicate in fixing all the prices, and the whole thing was known to him—both the first and the second issue. It was known to him that it was a syndicate, and all the conditions were known, because the first thing almost was a letter from Mr. Beelaerts van Blokland to the company asking for the names of the syndicate, and afterwards he dealt with the directors of it in all the negotiations about fixing the price. The Transvaal Government wanted the price of issue to be as high as possible, and the issuing syndicate wanted it to be as low as possible, and everything with regard to the first and second issue was done direct between the syndicate and Mr. Beelaerts van Blokland. He knew everything, and, of course, to us, he was the Government.

(*Mr. Hume Williams, Q.C.*) Now, sir, may I present just a few of the facts and the dates with reference to the present position of my clients? You will, I hope, appreciate the fact that the whole of the Selati Railway has been made by Mr. Winby or by his firm, and also the fact that no part of it has been handed over to the company or to the Transvaal.

(*Chairman.*) Have they still got the contractors' lien?

(*Mr. Hume Williams.*) No; the Transvaal Government has held that it was the property of Mr. Winby—the whole of the plant.

(*Chairman.*) The whole of the earthworks and plant, and everything that has been done?

(*Mr. Hume Williams.*) Everything, and in consequence of that Toleman's executors, under the judgments which they obtained against Mr. Winby, have paid off Mr. Winby's other creditors in the Transvaal, amounting to £8,000, and have thereby secured for themselves the whole of the present assets of this line which they now hold, so that the present position is that Toleman's executors hold the whole of the stock of plant and everything that there is in connection with the Selati Railway Company under these two judgments, one for £52,000 odd and one for £29,000 odd, plus the sum of £8,000 that they paid to Mr. Winby's creditors out in the Transvaal so as to secure it for themselves. That at the present time is all that they have got.

(*Chairman.*) Are those judgments judgments in the Transvaal?

(*Mr. Hume Williams.*) One is in the Transvaal of £52,000, and the other is an English judgment. On the 13th of May, 1898, Toleman's executors got a judgment against Mr. Winby for £52,940 19s. 9d., with interest and costs, and on the 6th of June, 1899, in an action in the Chancery Division of the High Court, they got a judgment for £29,744 17s. 4d., and there was also an inquiry directed as to certain other liabilities of Winby to Toleman, and, consequently, to Toleman's executors. Then also the position of Toleman's executors is this, that under certain agreements, which I do not think you need be troubled with in detail, they are mortgagees of Mr. Winby, and that, therefore, they hold not only what they have got from the fact that they purchased these assets out there and that they are judgment creditors, but they are also mortgagees and they also hold Mr. Winby's power of attorney to pursue any claim (which I shall detail to you) that he has against the Belgian Company and against the Transvaal Government. I will give you shortly the dates: you probably know the majority of them a good deal better than I do, but I will state them quite shortly. You remember, doubtless, that on the 15th July, 1891, the Volksraad of the South African Republic approved the granting of a concession for the construction of the Selati Railway. I will not take you through the details of the concession, which, doubtless, have become by now quite familiar to you. On the 22nd of February, 1892, the Barons Eugene and Robert Oppenheim, who had been the promoters of the company, formed what we now call the Belgian Company—its full title is La Compagnie Franco-Belge du Chemin de Fer du Nord de la Republique Sud-Africaine. That having been done, on the 6th September, 1892, the Belgian Company entered into a contract with a gentleman of the name of Warnant for the construction of the line, at a sum of £9,600 per mile. Previously to that date Mr. Winby, of the then firm of Westwood and Winby, had been out to South Africa, and had travelled over the route of the proposed line of railway. There had been what was called a flying survey previously made by an engineer, a gentleman of the name of Bechtle. But Mr. Winby himself went over the whole of the land at great

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expense, and at some personal endurance, because it was a place to which no white man had hitherto been, and he was the only human being who knew anything about the *locus in quo*. After this gentleman, Mr. Warnant, had entered into his contract with the Belgian Company to construct at £9,600 per mile, he, if not on the same day, immediately afterwards, entered into what we should call a sub-contract with Messrs. Westwood and Winby to do the work for a sum of £7,002 11s. 11d. a mile, leaving a very substantial profit, of course, to Messrs. Oppenheim. I do not doubt that you have taken evidence on that point.

(*Chairman.*) Was there any agreement with Mr. Winby before the contract with Warnant?

(*Mr. Hume Williams.*) I am instructed none of any sort.

(*Chairman.*) Had any preliminary understanding been made with Winby before the contract with Warnant?

(*Mr. Hume Williams.*) What I am told is (of course, this shows the inconvenience of answering questions in this indirect way) that the reason that he had gone out to South Africa was because Messrs. Oppenheim had told him that he might possibly get this contract.

(*Mr. Percy Tatham, Solicitor for Mr. Winby.*) As a matter of fact, Winby had made a contract with some people which was an impossible contract, and they had got (though I have never seen what the arrangement was) some arrangement with Messrs. Oppenheim—what it was I do not know. When Winby returned from Africa that contract was an impossible contract.

(*Chairman.*) As a fact, had not Winby agreed to make this line at a price less than that which Oppenheim had agreed subsequently, and made that agreement before the contract with Warnant was signed?

(*Mr. Tatham.*) There had been a contract. After a great deal of discussion and negotiation Winby had agreed to make this line for a sum of money which I think is the same as this. I do not think there was ever any alteration, but had I known this question was going to be asked I would have brought all my papers. But undoubtedly Mr. Winby had practically fixed the price before the date of Warnant's contract.

(*Chairman.*) Before the Warnant contract was made?

(*Mr. Tatham.*) Yes.

(*Mr. Hume Williams.*) Then the instructions which were conveyed to me, and which I repeated to you, were inaccurate. The fact remains, at any rate, that these two contracts may be taken as practically coincident and simultaneous—the one by which Warnant was to get £9,000 odd per mile, and the one by which Winby was to do the work for £7,000 per mile.

(*Chairman.*) Hardly that; probably this has no bearing on Winby, but there are other connections in which it may be relevant. It is clear, as I understand, that that contract was made before the Warnant contract was signed.

(*Mr. Tatham.*) Practically.

(*Mr. Winby.*) You cannot say that a contract was made, but we can say this—we negotiated, and that was the price upon which the contract was going to be engrossed, and we never knew anything about Warnant.

(*Mr. Hume Williams.*) Upon this arrangement between Warnant and Winby taking place, a letter was written on the 9th September, 1892, by the contractors, Messrs. Westwood and Winby, to the company. It is set out in our statement at page 26—D, and is in French:—"We have the honour to acquaint you with the fact that Mr. Warnant, the engineer, has made over to us his contract for the construction and the equipment of the line from Komati-Poort to Selati that you had granted him by your contract of the 6th September. He has given us the concession and the memorandum and articles of your society"; and then they go on to say, and these are rather important terms, "You will remit to us the payments which you have still to make to him under your contracts up to a sum of £1,348,000 for 192½ miles, that is to say, £7,002 11s. 11d. per mile," specifying to the company the exact amount. "If the length of the line is less than 192½ miles, the price we are to receive shall be reduced to £3,500 for every mile or fraction of a mile less than the stipulated amount. If it is more than 192½ miles, then for any construction above that 192½ miles we are to receive £9,600 for a mile or portion of a mile, up to 200 miles." The importance of that from Mr. Winby's point of view, and through him from our point of view, and from the Attorney-General's point of view, is that that contract is still in existence, and if he is called upon to construct further, he will construct under the terms of that, and at that price. Then it says, "Under these conditions, we beg you to accept us."

(*Chairman.*) I only ask the question for curiosity; why is there a reduction of price if the job is not so good a one? I should have thought in the ordinary course, if the line was 200 miles instead of 192, you would get a small reduction, because the gross job was greater.

(*Mr. Winby.*) It is really an engineering question upon that point. To make a line shorter, you may necessarily have more earthworks and more works of art to do. By making easier work and taking it a longer distance, you have not so much work to do, and consequently it cuts both ways; that is to say, you get the advantage one way if you make the line longer.

(*Chairman.*) I should have thought, if you made the line longer, and therefore easier, the price per mile would be less; but this contract appears to be the reverse. You get a less price for a shorter length. However, it is not really material.

(*Mr. Hume Williams.*) There is probably some engineering explanation. The letter continues, "Under these circumstances, we beg you to be good enough to accept us as the contractors of the line in place of M. Louis Warnant, and to consider us as having been substituted for him in all the engagements which he has entered into with regard to yourselves, and we consent formally to undertake all engagements, and to fulfil on our part the contract which he has entered into with you." Then there is the answer to that, on the 11th September, addressed to Westwood and Winby, and signed by these two Barons Oppenheim—they sign themselves as "Barons." "Louis Warnant, our contractor, has written us a letter dated the 9th September, informing us that he has conceded the enterprise which we had conceded to him for the construction and equipment of a line of railway beginning at a point"—then they specify the two points—"to you. On your side you have acquainted us by your letter"——

(*Chairman.*) Is this more than an acceptance?

(*Mr. Hume Williams.*) No; the only material part is that it repeats the fact that what Winby is to get is the sum of £7,000, showing the company clearly appreciated at the time this difference in the contract. Then, that being so, Mr. Winby or Messrs. Westwood and Winby, as they then were, began the work in 1892, and they began the work along the line of railway which had been prospected, if one can use such a word—not defined exactly—of which the flying survey had been made.

(*Mr. Loveday.*) Roughly surveyed?

(*Mr. Hume Williams.*) Yes; they began the line on that, and then, as Mr. Macrae told you subsequently, the Government Engineer of Railways said it was not the right route, and it had to be altered.

(*Chairman.*) The Commissioner of Railways?

(*Mr. Hume Williams.*) Yes. That did not occur until several miles of line had been, in fact, constructed. Then in January, 1893, we come to various issues, which Mr. Macrae has dealt with so fully that I do not think I need further detail them to you. They did interest Mr. Winby to some extent, because, according to the terms of his contract these issues could not be made without the consent of the contractor, of course, the proceeds of them going to the contractor, and at the time of this second issue, that is, the issue of £1,000,000 debentures, in August, 1894, a somewhat material arrangement was come to. It was arranged then that the proceeds of that issue should be deposited in the joint names of the chairman of the Belgian company and of the representative of the South African Republic at the Hague, a gentleman whose name we have heard, Van Blokland, and that was done. That, in a sense, brought the contractor into relations with the Transvaal Government, because out of that sum which was so deposited in the joint names of the chairman and of the Transvaal representative at the Hague, he was paid from time to time for the consignments of goods that he made to the Transvaal, and for the work that he there executed, for materials shipped, and for the work as it went along; payments, I understood, out of that sum were made to the contractor.

(*Mr. Winby.*) No; absolutely no. It is a very important thing that I should intervene now, because this has been the subject of a law-suit in a court of law, and

it has been held that it is not so. The company made us advances on the work, and in order to show we were diligently carrying out the work and proceeding with the contract, we should let them know that we were shipping materials in due course and at the right time, and we gave them copies of our bills of lading, which were sent from Westwood and Winby, England, to Westwood and Winby, Komati-Poort. The company had advanced us money upon the works as they proceeded, and as we had finished another 25 miles of line, for which we had all the materials in stock, we should be entitled to a certificate for £300,000, which we never got. When the line was stopped for a long time, and I began to sell what materials were useless for us then in the Transvaal, the railway company attempted to stop us by law in the Transvaal, and the case was properly tested, and the company went time and again, and they lost the case, and it was held it was not so.

(*Chairman.*) I do not see that that involves any contradiction of what Mr. Hume Williams was saying. What Mr. Hume Williams said was that the proceeds of this second issue of August, 1894, were, I suppose, although he did not say so, but I suppose, owing to the fact of there being some controversy then subsisting between the Government and the company, were placed to joint names, one representing the Government and one representing the company.

(*Mr. Winby.*) There was no controversy at that time.

(*Chairman.*) Perhaps you can tell me why it was placed in joint names.

(*Mr. Hume Williams.*) The contractors had to be paid as they went along, and I suppose it was thought it was more preferable; at any rate that was the arrangement settled, that they should be paid in this way, instead of being paid by the trustees, who, I suppose, otherwise would have paid it.

(*Chairman.*) *Primâ facie* it was an obligation of the company to Mr. Winby to pay for the work he was doing.

(*Mr. Tatham.*) May I make the matter plain?

(*Chairman.*) There was a controversy in June, 1894, between the Government of the Transvaal and the company. In August, 1894, that issue was made Now, between you, can you tell us why the issue which *prima facie* should go to the company, and by the company should be paid over to Winby on certificates, why that was not done, and why the rather unusual course was adopted of depositing it in the joint names of the representative of the Transvaal and the representative of the company.

(*Mr. Tatham.*) Perhaps, sir, as Mr. Winby's solicitor, you would allow me to appear for him under these circumstances. Under the terms of the contract, Westwood and Winby were entitled to have issued direct to them, until they made these other arrangements, the £300,000 issue at the various stages of the work. After the success of the first issue of £500,000, the company and its advisers and the Transvaal Government also were very anxious to issue £1,000,000. At first they carried out this arrangement of issuing that £1,000,000 without consulting us at all, and when I first heard of it I pointed out to the gentlemen who were acting that they could not make any issues without the consent of the contractors, who were not only entitled to receive them, but who had got a material interest in not having more than £300,000 issued at a time, because the price of the issue was going up, and the greater the price of the issue obtained, the more money they got on account of their work. Then it appeared, from the negotiations that we had with the company's solicitor, that they had made some arrangement with the Transvaal Government that interest on the debentures should be paid out of the proceeds of the issue if the £1,000,000 issue was consented to, and therefore very long negotiation took place between their representatives and ours, which ended in this arrangement, that if we consented to this issue that they should pay us moneys between the issues on account of the work we were doing. They were very anxious indeed that we should have payments made on account on engineer's certificates. Our contract had got no provision for any engineer's certificate in it, and we would not consent to be controlled by any engineer of the company at all by way of certificate, and therefore the question arose. Well, how are you to determine the payments that are to be made on account? And, therefore, heads of arrangement were come to, and I want to emphasise this, because it is true the heads of arrangement were that we should have advances made to us on account of the next issue proportionate to our shipments of goods; that the company should be satisfied we were shipping goods; and it was also provided when certain stages of the work were done on a telegram from the company's engineer we should be entitled to further advances; but that was only a method to take the place of an engineer's certificate, and it was distinctly understood. I want to guard very much against the idea that those advances were advances against the company, because that might have given colour to the company's suggestion that they paid for those materials. Am I making myself clear?

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(*Chairman.*) Yes.

(*Mr. Tatham.*) There being no method in the contract as in an ordinary railway contract for paying the advances on the engineer's certificate, some plan had to be devised.

(*Chairman.*) Does it not come to this: The controversy was a controversy between Messrs. Westwood and Winby under that contract and the debenture holders, who were claiming interest which they had paid?

(*Mr. Tatham.*) There was not any controversy between the old debenture holders at the time.

(*Chairman.*) The reason you placed this money to joint account was that the debenture holders were saying: "Out of the proceeds of this issue we ought to have our interest provided for."

(*Mr. Tatham.*) No; the Transvaal Government asked for that. The company would be better able to explain that; but the way it was represented to us was this: First and foremost we could not expect that the £1,000,000 should be issued to us. It would naturally have been deposited somewhere, and the company represented to us they had had a great deal of difficulty, and the only thing we understood. They did not tell us to the last moment of the delay of the issue, because we were entitled to our second issue. We had done our work a long time.

(*Chairman.*) Tell me what the controversy was.

(*Mr. Tatham.*) The controversy was this: We were pressing for our second issue under the terms of our contract.

(*Chairman.*) And which was open to you?

(*Mr. Tatham.*) The company told us that they could not get the consent of the Government to the issue, and it was only two or three days before this matter turned up that we found that the reason of the delay had been that they were making arrangements for £1,000,000 issue instead of a further issue of £300,000, and then when they came to us and said, "We are going to issue £1,000,000," we said, "You cannot; that is ours." And then they said, "We have made some arrangement advantageous to the Government, and to everybody, that this £1,000,000 should be issued, and we have also made arrangements that in accordance with one of the terms of the concession we are during construction to make advances to the Government, and pay certain administration expenses, and to pay certain interest on the debentures.

(*Chairman.*) That is what I said—the people who were providing the money, according to you, were making some arrangement with the Transvaal Government that out of this £1,000,000 some provision should be made for the payment of interest.

(*Mr. Tatham.*) That the Transvaal Government were making that arrangement with the company, not with us, on behalf of future debenture holders.

(*Mr. Evan-Thomas.*) The point you raised, Sir, I do not think Mr. Tatham has answered. It was before my time, but the real reason why they required—I think very properly—that the money should be put in joint names was that the company were not entitled to raise money until certain work had been done. Therefore, if they issued £1,000,000, that would have lasted a year and a half, and the company would have had it in their sole control all the time. They therefore very properly said (and if I had been in the company at the time I should have agreed) it ought to be in joint names, and so it was put.

(*Mr. Hume Williams.*) With great respect to what these gentlemen have said, it does not appear to my abstruse mind to displace the point—if point it be—that I was making at the time, which was this—that there were funds deposited in the joint names of the president of the company and of the representative of the Transvaal, out of which payments were made to the contractors.

(*Chairman.*) I do not think it has been shaken at all.

(*Mr. Hume Williams.*) It seems to me it has been rather a lengthy explanation of the circumstances under which it came to be done, but the fact remains that it was done. I am not saying it was against engineer certificates. I am not saying it was taken as final. It was

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not because there were final accounts to be adjusted between the parties at that time. The point of my observation was that I say you brought the contractors into touch with the Government. The Government were having a say—there was this money partly in the hands of their representative, out of which payments were being made to the contractors who were doing the work at the time. That was in 1894. Then the work came to be stopped under circumstances of which you may have heard. It was going on, and the earthworks had been completed up to an extent of 119 kilometres, and at that time an inspector of the South African Republic—a gentleman of the name of Mooijens—went to see the Selati line, inspected it, and said that it was being taken too much to the west, that it ought to have been taken more to the east, and he stopped the work. Mr. Winby, the contractor, as he was at that time, promptly asked for directions as to what he should do—how he should go on with the lines—and for some guidance as to what he should do, and in the meantime, without any knowledge that this was going to be done, he had shipped materials in advance for going on with the line upon the route they were then constructing it, and he then made a claim against the Belgian company for £39,290, which he said was the advance which ought to be made to him, and the Belgian company came to the conclusion it was a proper payment, which should be made, and they promised to make the payment, and promised to send a cheque; but instead of getting a cheque, Messrs. Westwood and Winby received an intimation from the representative of the South African Republic at the Hague that he had been instructed to make no further payments or to allow no further payments out of this sum, which was deposited in these gentlemen's names, to be made at all to Messrs. Westwood and Winby until certain questions pending between the Government and the company had been settled.

(*Chairman.*) What date was that?

(*Mr. Hume Williams.*) That must have been about 1894 or 1895. I have not got the exact date, but about 1895. Then, for the first time, Messrs. Westwood and Winby learned some details of the dispute between the Transvaal Government and the company—allegations that the line was not following the proper route, and then certain quarrels as to the terms on which the issues had been made, and so on, which are not material, as far as I can make out, to Mr. Winby's case at the present time. Then in May, 1895, Messrs. Westwood and Winby dissolved partnership, Mr. Winby on the 7th October, 1895, making a substantial payment to his partner, and becoming the sole partner in the firm, and since then he has been the sole contractor for this Selati line; and until these judgments were obtained against him the whole of the property of the line belonged to him. As you can well conceive, if a contractor is suddenly stopped in the middle of a large undertaking of this kind, with all his plant out there, and all his men employed, and the whole construction contract in full swing, you cannot drop it in a moment, and very considerable expenses were incurred, and Mr. Winby, if you should think fit to call him, will tell you he did incur a very, very large expenditure in keeping the plant and the rolling stock in decent condition, in paying the wages of the large staff of men whom he was employing at the time that the work was stopped, and in keeping the locomotives dry, and things of that kind; because you cannot all of a sudden turn your back on an undertaking of this sort, leave the men to starve, and come away. It did entail, of course, a very considerable expenditure on Mr. Winby, in respect of which he has a very considerable claim against the Transvaal Government. His case is, rightly or wrongly, that this stoppage of the work, which was undoubtedly owing to the Government, because it was by the Transvaal Government's orders that his work was stopped, was a wrongful act in respect of which he is entitled to compensation from the Transvaal Government.

(*Chairman.*) Was it by their order?

(*Mr. Hume Williams.*) It was by the order of Mooijens, or on his part.

(*Chairman.*) He would have no relation with the contractor, would he? I suppose the course of business would be that Mooijens would say, as Government inspector, to the company, "This line is not being carried out in conformity with our plans or our judgment, and you must stop it." The Government had no relation with Winby personally, had they?

(*Mr. Hume Williams.*) The practical way in which they stopped it was by refusing to allow the payments.

(*Chairman.*) Refusing the supplies to the company?

(*Mr. Hume Williams.*) No, not to the company, because it was out of this fund that the payments were being made to Westwood and Winby direct.

(*Chairman.*) But it was a fund under the control of the Minister and the company.

(*Mr. Hume Williams.*) Yes, undoubtedly; but then he refused his assent to any payments being made out of that fund to the contractor with which he could go on with the work.

(*Mr. Evan Thomas.*) What actually stopped it was, they did not approve the plans for the succeeding sections.

(*Chairman.*) I am only throwing this out—I may be quite wrong—but in ordinary course, if work has to be executed according to plans to be approved by a certain person, that approval or disapproval would be given to the company?

(*Mr. Hume Williams.*) I quite concur, if I may say so.

(*Chairman.*) Then they would say, "We cannot get leave from these people to go on on these plans, and therefore you must stop"; and the company would be the persons who in the ordinary course the contractor would sue.

(*Mr. Hume Williams.*) Certainly. I may say, if my instructions are correct, that the peculiar circumstances here are these. Here was this sum of money standing in the joint names of the representative of the Transvaal Government and of the railway company. Out of that sum the contractor was made advances (if Mr. Winby prefers it to be put in that form) from time to time, with which he had to go on with the work. There came a time at which the representative of the Government said: "I will not sanction any more payments being made out of that fund," the president of the company being prepared to allow payments to be made, so that that was a direct act between the Government and the contractor.

(*Chairman.*) Do you say that any cause of action arises against the Government at the suit of Winby or his representatives on that? How would you formulate your action?

(*Mr. Hume Williams.*) That is perfectly clear. Supposing the arrangements were that this fund was to remain in these gentlemen's names—of the representative of the Government and the other—and out of that fund advances were made to the contractor, out of which he was to do the work—that was a tri-lateral arrangement, an arrangement in which the three of them were interested. There comes a time when one of the three without whose consent the funds cannot be paid refuses to allow them to be paid. Surely there is a cause of action?

(*Chairman.*) It depends whether there was an implied promise on the part of the Government that if Mr. Winby consented to this money being put into joint names, then on the happening of certain conditions that money should be paid out. That is the way you would draw it, I suppose?

(*Mr. Hume Williams.*) That is the way I should draw it, and I defy anybody to strike it out. I am detailing the facts to you as they are. This seems to me a question which naturally you will not consider, but which some other tribunal will have to consider, whether or no Mr. Winby has got a claim. In fact the damage he has sustained is beyond doubt.

(*Chairman.*) That is pretty clear.

(*Mr. Hume Williams.*) That is perfectly clear, and whether he might have a claim against the company also I do not know; what the solvency of the company is I do not know, and I am not concerned with that at all, but at any rate, this is the claim that Mr. Winby desires to press against the Transvaal Government in which we, and by "we" I mean the Attorney-General, are vitally interested, because we have got a claim amounting to £90,000, and it practically forms nearly the whole of the residue of Toleman's Estate, which the Attorney-General has got to get hold of if he can, and distribute it in charities. I am not introducing that for prejudice, but it is a fact—I am not supposing that would influence your judgment, if you were to bring judgment to bear upon it, in the least. Then, sir, to complete the dates, on the 9th October Toleman died. His will was proved on the 10th August, 1897, and an administration action was begun on the 24th August, 1897, which is and always has been before Mr. Justice Stirling, with whose concurrence all proceedings have been taken, of course, including

the appearance of my friend and myself here. Then, as I told you, a large part of the claim of Toleman's executors consists of this £90,000, in respect of which they are mortgagees, and I have told you of the judgments we had got—those come next in order of date. Then on the 26th July, 1900, Mr. Winby executed a power of attorney in favour of Toleman's executors, in which he recapitulates the facts about the stoppage, and the construction of the Selati Railway, and that he hoped to have some compensation, and have some allowance made to him by the Government, and he appoints Toleman's executors to deal on his behalf with the Government of the South African Republic, or with the Government of the United Kingdom of Great Britain and Ireland, and with anybody who is entitled to deal with the matter, or out of whom compensation can be got for what has happened. Then, sir, the next thing in order of date is a fact which you doubtless know, namely, the proceedings against the Oppenheims?

(*Chairman.*) Yes.

(*Mr. Hume Williams.*) You doubtless know criminal proceedings have taken place, and these two gentlemen, the Oppenheims, and Louis Warnant were charged with fraud. The Oppenheims were convicted, and sentenced to one year's imprisonment, which sentence is now under appeal, the appeal not having yet been heard. Now, sir, our anxiety, and when I say "our anxiety," I mean the anxiety practically of the Attorney-General, who is naturally anxious to get in this residuary estate if he can, I tell you frankly, is this, lest in your Report you should in any form or shape lead to a result which might prejudice Mr. Winby in his present, or in his future position, with regard to the construction of the Selati Railway. As I point out to you, the actual position is this: Toleman's Executors are now the possessors—the actual possessors of the plant of this railway as it is, so far as the railway exists, so far as it has got any plant, or any material, or locomotives, or anything else, they are ours. We have bought them. Mr. Winby has not only got these substantial claims against the Transvaal Government, but he has got also a subsisting contract which entitles him to complete at this agreed price of £7,000 a mile this railway for the Belgian Company. It may be a very valuable one. Mr. Winby thinks it is; but, at all events, it is one on which he has bestowed a great deal of trouble and expended a great deal of money. Also, as is pointed out to me, the terms of the contract are such that if this line is extended, as under the improved and altered condition of things in the Transvaal one may hope it may be in time, he is the person who is entitled to construct the extension at an increased price, a price which you yourself called attention to when I read this letter from the company; and, therefore, it would be a great hardship, I might almost venture to say, an injustice, if his position were in any way prejudiced by any report that you might think fit to make in the future. I think, sir, that is all I have to say. I hope I have made my position clear to you. Mr. Winby is here, and Mr. Tatham is here, both of whom know this thing *haut au bas*, and if there are any questions you might think fit to put to them on any of the matters I have opened, they would only be too pleased to answer them.

(*Chairman.*) I want to carefully understand your position. We have got, as I said at the beginning, to deal in our report with the concessions. You, as representing Mr. Winby, ask us in our report so to deal with this concession, making such reserves as to leave Mr. Winby's position unaffected?

(*Mr. Hume Williams.*) To safeguard his interest?

(*Chairman.*) To safeguard his interest. You further say, I suppose, that the annexing Government which has annexed this country, and, among other things, this railway, should recognise any justly acquired right in any property which is in those dominions?

(*Mr. Hume Williams.*) Quite so.

(*Chairman.*) And you say that Toleman's executors have a *bonâ fide* right by purchase in what may be called the result of Mr. Winby's labour?

(*Mr. Hume Williams.*) Certainly.

(*Chairman.*) That is so far as the property is concerned—that is what your position is?

(*Mr. Hume Williams.*) It is not only the existing property which they have got and which they have bought, and nobody can dispossess them of.

(*Chairman.*) You say not merely has Mr. Winby and his representatives got a property right by purchase in this, but they have a contractual right—with whom?

(*Mr. Hume Williams.*) With the Government and with the company. 6 Dec. 1900.

(*Chairman.*) But is it with the Government? Where is your right as against the Government?

(*Mr. Hume Williams.*) Except in so far that the Government were aware of this fact—that the gentleman was a contractor.

(*Chairman.*) Which will not do.

(*Mr. Hume Williams.*) There is no written contract between the contractor and the Government.

(*Chairman.*) In order to have any case at all—I do not say it would be a good one even if you had it; I leave that open—but in order to have any case at all on a contract you must have a contract subsisting and justly acquired, and legally enforcible against the Government of the Transvaal. Where is there such a contract?

(*Mr. Hume Williams.*) I do not say there is any legally existing contract with the Transvaal; I cannot put it as high as that. I prefer to put it in this way: Supposing by any chance the concession was to be destroyed, or was to be declared null and void, or anything of that kind, then Mr. Winby would have lost all the fruits of his labour; he would have lost the very large and unrequited expenditure which he had made, and he would have lost his right that he has got to complete the construction of the line.

(*Chairman.*) Would he? The company has certain large funds now standing in joint names. Mr. Winby establishes a breach of contract against the company; there are, at any rate, some assets against which he has recourse, or may have recourse, but what I want to know is (because you put your case distinctly on two bases) what foundation have you for the statement, for at present I tell you frankly I see absolutely no contract at all between Mr. Winby and the Government, and no obligation of the Government to complete this line through this desert country at all?

(*Mr. Hume Williams.*) If we had been arguing the case now I should have been prepared to argue that supposing the Transvaal Government, knowing this gentleman was a contractor, allowed him to go on placing the funds in the joint hands of their agent and the other agent, and, therefore, recognising his work, supposing that to be the fact, and supposing Mr. Winby to have acted honestly, as I am always assuming, and he is here to prove that, if needs be, he was no party to the frauds, if fraud there be——

(*Chairman.*) I am not speaking of that. Is there a contract between him and the Government?

(*Mr. Hume Williams.*) I say it may be you cannot have a contract by estoppel, but it would not lie in the mouth of the Government, and the Government would be estopped in any action taken by Mr. Winby from denying it was with their connivance and with their sanction, and, in a sense, for their advantage, that he was going on with the work. I cannot put it higher than that. I do not contend that there was any legal contract. There was not.

(*Mr. Evan-Thomas.*) Will it be necessary, sir, for the company to go into this question of the contractors, because I should like to have it upon your notes that we admit nothing?

(*Chairman.*) Yes, that shall be taken.

(*Mr. Hume Williams.*) It is pointed out to me that Mr. Winby, the contractor, has a lien on the line.

(*Chairman.*) That is entirely a different point, and absolutely covered by the first if good. Mr. Winby's representatives are, according to you, owners by purchase of the line.

(*Mr. Tatham.*) No.

(*Mr. Hume Williams.*) Not the actual line—not the rails and the earthworks?

(*Chairman.*) The earthworks and the plant was the way it was put.

(*Mr. Hume Williams.*) I mean all the movable plant—the things that were sold.

(*Chairman.*) Then Mr. Winby has always kept a hold on the earthworks which he has made?

(*Mr. Hume Williams.*) Subject to our mortgage he still has it.

(*Chairman.*) I understand that question, but the subsequent point which you put was practically this, that in some proceeding in those courts Mr. Winby could enforce specific performance of the contract to complete

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this line at a certain price. I understand what your case is upon that, and I note it. When Mr. Evan-Thomas has given the information that we hope to obtain, we may require Mr. Winby, and we will give you good notice of it.

(*Mr. Evan-Thomas.*) It is understood I have not to prepare any case about the contractors?

(*Chairman.*) Oh, no; we shall not want that.

(*Mr. Hume Williams.*) I have not said anything about my claims against the company; because that does not affect your inquiry. You do not trouble about any dispute between Mr. Winby and the company, or even between Mr. Winby and Toleman's executors, although, of course, such disputes have existed?

(*Chairman.*) No.

EIGHTEENTH DAY.

ALBANY BUILDINGS, 47, VICTORIA STREET, WESTMINSTER, LONDON.

Thursday, 13*th December*, 1900.

MEMBERS OF COMMISSION:

The Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

SELATI RAILWAY CONCESSION (CONTINUED).

13 Dec. 1900.

Mr. Hume Williams, Q.C., and Mr. Ashton Cross appeared on behalf of Frederick Charles Winby, and James Toleman's Executors.

Mr. Edmond Evan-Thomas appeared on behalf of the Selati Railway Company.

Mr. Stephenson, Solicitor (Messrs. Harwood and Stephenson), appeared on behalf of the Trustees for the Certificate holders in the Selati Railway Company.

Mr. G. H. C. Lea, Solicitor, appeared on behalf of the trustees of the certificate holders in the Selati Railway Company.

Mr. C. C. MACRAE, recalled; and Examined.

(*Witness.*) Before you proceed, sir, to take further evidence, would you allow me to make one statement with reference to the question you addressed to me the other day? You asked me whether I could fix a time at which I first became aware of any question having arisen between the Government of the South African Republic and the company, and you may recollect that I tried to remember, but I told you I could not fix the exact date. On reflection I thought it must be about the time that the shares were issued. Since I gave my evidence I have been looking at the documents to refresh my memory on it, and I am able to fix the date now that you asked me for. I find that the first time that the fact of a question having arisen between the Government and the company was really brought to my notice, was the date of the publication of a letter which was put up at the Stock Exchange addressed by the Railway Commissioners of the South African Republic to the Franco-Belgian Company. That letter was posted up in the Stock Exchange at the time that the company were applying for a Stock Exchange quotation of the shares that had been issued. That was public property. The letter is dated the 7th June, 1895, and is in these terms, addressed to the Franco-Belgian Railway.

3362. (*Chairman.*) I know the letter. It repudiates the obligation to pay the guarantee?—The guarantee on the shares, but it said they would pay on the bonds. I can say distinctly that was the very first intimation that I received of questions having arisen.

3363. I had forgotten it said anything about the bonds. Perhaps you had better read the letter?—The letter runs as follows:—"7th June, 1895. Gentlemen,—As it has appeared to me from an investigation made, that your administration leaves much to be desired, and that the terms of the concession have not been duly observed by your directors, these presents are to inform you that I have advised my Government to pay no interest on the share capital of your company, pending this question and investigation, and subject to the result thereof. Our Minister, the Right Hon. Beelaerts van Blokland has, however, instructions to pay the interest on the bonds." That is the letter. That was the very first intimation, and I would only add to that, in confirmation of the fact, that I find it had escaped my memory on the last occasion, and I do not know that it is relevant, but it only confirms what I now state), that some months before, just prior to the issue of the shares, I had myself purchased about 150 shares at nearly £16 apiece; so that I do not think I can give you better proof of what was in my mind, and that I did not doubt the validity of the thing at the time.

3364. You bought the shares before the issue?—Yes.

3365. I understood from you last time, and that is what you fixed the date at which you became aware of this controversy by, as the date of the issue of the shares in February, and you also said, I think, if I remember right, that your company was approached with a view of seeing whether they would issue the shares?—That is quite right.

3366. And that your investigation of that proposal was such as to make you altogether decline it?—If I conveyed that effect that is going too far.

3367. Perhaps I should ask you why you did decline it?—We declined it for this reason; that, as I told you at the commencement, when this concession was first put before us, in reading the conditions of the thing, amongst others, I formed this idea; that the payment of the whole of the share capital was what lawyers call a condition precedent. Now, without (I hope I made myself perfectly clear on that point), any information in fact or anything—I am speaking in the most frank and open way—without anything in fact to lead me to suppose that that capital had not been, or would not be, paid; the only information in fact before me being a full notarial certificate that was supplied to us—a certificate before a notary in Brussels—that the £500,000 of share capital had in fact been paid up in specie. Still, sir, what I venture to call the training that one has that makes one avoid, if possible, having to prove facts which are not within your own means of proof—I always felt as regarded that that it was a thing I had much better not take the responsibility myself of having to support my concession or

anything upon. These people, the concessionaires, were unknown to me, and therefore my own personal feeling of the matter was that it was best to keep clear of the question. The issue subsequently took place, and, so far as any feeling in my own mind existed, it was removed for the time being by what subsequently happened, namely, first of all the certificate of Van Blokland that the concession was valid and subsisting at a later date, which would not have been the case if the condition precedent had not been complied with, and, more than ever (and this was a fact that came out subsequently), that the interest upon the shares was, as I was informed, paid, and when we were asked to make the issue of the shares I felt that having already pledged ourselves for the bonds, and expecting to have a further issue (if the railway had gone on there would have been a further issue) of the bonds, that we had better keep ourselves clear of the shares which involved all the conditions of the concession; and that was the reason that I declined it. I did not want to have anything to do with it, but personally I can give no better proof of what my own personal belief was, as I told you, at that moment, than that I actually bought shares in the company at that time, and paid nearly £15 apiece for them. I am much obliged to you, sir, for allowing me to make that explanation.

Mr. C. C. Macrae. 13 Dec. 1900.

3368. (*Mr. Stephenson.*) Sir, I am representing the Trustees for the English Certificate holders of those shares, and if I may ask a question—I may be mistaken, but I am under the impression that Mr. Macrae's company actually underwrote some £20,000 of those shares when they were issued to the British public in February, 1895. I do not know whether you can remember that?—I do not remember that, but if you say so, as you have been looking at the documents, I will take it from you. I have stated we did take an interest in it, but I did not know it was £20,000.

3369. I understand that the company underwrote £20,000 of those shares?—I will take that from you. I was not aware of it.

Mr. EDMOND EVAN-THOMAS, called; and Examined.

3370. (*Chairman.*) When did your connection begin with this Selati Railway Company?—The first thing that I had to do with the contractors and with the Barons Oppenheim as their guarantors was in June, 1892. I am connected with a large shipping firm in London, and our Antwerp branch, which is managed by my brother, wrote to us to say there was a large transport of rails to go from Paris. As I represent the shareholders, I should like to make my own position perfectly clear before I enter on that of other people. I instructed the Antwerp people to inquire into it, and the information I got was that this transport was a very large one, some 50,000 tons, and was contingent on a loan of £30,000 being made to the contractors whom the Barons Oppenheim were going to guarantee. I then caused enquiries to be made of the bankers, the Crédit Lyonnais, who gave them a very first-rate character, financially speaking, and said they were perfectly good and rich. Then I was the chairman of a company called the Mercantile Development Company, and it was looked into, and I thought that it might be a good thing to take part of the loan. I then went to Mr. Macrae, who is a friend of mine, and I told him the whole thing and how it stood, and asked him if his company would take the balance. First I think it was to be one half, but eventually they took two-thirds.

3371. We need not have the details of other transactions besides this that we are inquiring into?—But it leads on.

3372. But we need not go through all these details. I asked you when your first connection with the Oppenheims began, and you say a certain date, and you say they were introduced to you in the business, and they were warranted by the Crédit Lyonnais?—I shall be very short if you will allow me to go on. There is something very material coming.

3373. I must beg of you to confine your explanation within reasonable limits?—Then the Share Trust suggested to me, "If we make this loan, why should we not get the option of the debentures, the contractors who were making the line being paid in debentures?" I said, "I do not see any objection," and I asked Baron Oppenheim, and he arranged it with the contractors. That is how we came into the debentures.

3374. Was that your first acquaintance with the Barons Oppenheim?—Yes; absolutely. I never knew them before. Then the company, of course, were interested in getting the debentures placed. These debentures had been very difficult to the contractors. They had tried them everywhere, many months before, to place them, and nobody would have anything to do with them. Then came the Rothschild loan, and that made the terms and credit better, and that made us anxious to get a portion of it. Then negotiations began, which were conducted by the counsel of the company with the Minister, for fixing the rate of the first issue of debentures. There was a very long correspondence with the Minister. I went to see him several times, and Mr. Macrae went to see him.

3375. We have had these negotiations with the debenture-holders through Mr. Macrae, and unless you wish to supplement or contradict anything he has said, I do not think we need have it again?—Why I was advancing this was because of the negotiations with van Blokland.

3376. You shall have a full opportunity, if you desire it, to make any observation afterwards, and to say anything that you please; but at present I think it is desirable that you should just answer the questions I put to you, as it will shorten matters very much. You were a trustee for the debenture-holders on the first issue of the debentures?—Yes.

Mr. E. Evan-Thomas.

3377. That was on the 28th January, 1893?—Yes.

3378. That is about a year or less after you had become acquainted with the Barons Oppenheim?—About six months.

3379. And as trustee, as making yourself responsible to the bondholders that were to be, did you acquaint yourself with the circumstances of the company at that time?—Yes; in company with the Share Trust. They were the issuing house, and it was their responsibility.

3380. You were a trustee?—Yes; but I should like to explain we were trustees for this reason—that a sum had to be held for the contractors; they had not earned it, and therefore it was not to protect the bondholders; but the Share Trust insisted that the money meanwhile should be held by trustees, to be paid over to the contractors so soon as they had earned it, and that was done.

3381. I suppose there was a prospectus issued for these bonds?—Yes.

3382. And your name appeared on that prospectus?—If you will allow me just to see it; I feel sure it did.

3383. Probably it did, but it may not be so?—(*The prospectus was produced, and handed to the witness.*)—Oh, yes; there it is, at the top.

3384. Of course, you were inviting a subscription for these bonds, and Mr. Macrae's name and your name appear on the face of the prospectus, and, of course, you are aware of the consequence upon the minds of those who would subscribe?—Yes.

3385. May I take it you had acquainted yourself thoroughly with the state of the company before you became trustee?—Yes; of course, we principally relied upon M. van Blokland's certificates, both of which we had here; there is one from himself to the Share Trust in the prospectus, but there is another letter which was attached to the very trust deed you are mentioning, which is the very trust deed alluded to in the prospectus.

3386. "I have the honour to acknowledge the receipt of your letter of the 19th of December"?—That was the one which was published in the prospectus. Then the next one, which is still more important for the purpose of the trustees, is, "The Hague, 20th January, 1893." The last paragraph but two is, "In addition, I am pleased to certify by these presents that my Government recognise the concession of the Selati Railway as perfectly valid, and the Company Franco-Belge du Chemin de Fer du Nord de la République Sud-Africaine as the proprietor of this concession."

3387. I see in the recitals of that trust deed of the first issue of the 28th January, 1893, specific mention is made of the contract between the railway company and Louis Warnant?—And this cession, which is still more important.

Mr. E. Evan-Thomas.

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3388. And the cession by Warnant. Messrs. Westwood and Winby are parties, and are called the contractors in it, and then there is a recital of the contract between the railway company and Louis Warnant, and there is a recital also of the letter of the 9th September and the 11th, by which it was agreed that Westwood and Winby should undertake the construction and equipment of the line of railway, and should be accepted by the railway company as contractors in lieu and in place of Warnant?—That is so.

3389. That sub-contract was within the knowledge, as appears by this, of all the parties, including van Blokland?—Yes.

3390. Is there any mention in that deed of the fact of the terms of the cession?—I do not think so. Of course, that was not in the least material to us at that time for the issue of debentures.

3391. Of course, you had made yourself familiar, before becoming trustee, with the concession?—With the French translation of it.

3392. I think, if my memory is right, that the trust deed makes a specific reference to Article 25 of the concession?—Yes. "And by Article 25 of the said concession." Yes; that is so.

3393. Article 25 therefore had been brought to your attention specifically?—Yes; I suppose so.

3394. You remember the early portion of Article 25: "The company will, for the construction and the working of the railway referred to in Article 1, and everything appertaining thereto, including all costs incidental to its formation, temporary works, and the rest, and transmission of money, etc., and a maximum of £10,000 in fully paid-up shares to the concessionnaires for the transfer of the concession, have a capital of £500,000 sterling in fully paid-up shares." You remember that?—Yes.

3395. At that time, then, you knew what we may call in general terms "promotion money" was limited by the terms of the concession itself to £10,000?—Well, sir, I am bound to say that is opening up a large question which I hope to make to you some observations upon, because that Clause 25 has been, and is at this moment, the bone of contention upon which there are several views. In the first place it is very obscure, and in the next place the copy of the translation of it on which we worked was made by the French Vice-Consul.

3396. (*Mr. Loveday.*) Who was the French Vice-Consul at this time?—M. Aubert. This is the document upon which the company and everybody else went up to the time of the issue of these shares. I think our present translation may be considered accurate, because in our proceedings against the Government in the Chancery Court they practically admitted that our translation was right.

3397. (*Chairman.*) The translation I have just read to you?—The English translation that I have put in.

3398. Can you tell me the point about it, because at present this translation does not appear to me to raise any very great obscurity? Perhaps you can tell me what the obscurity is, and then point out how that French translation bears upon it. In order to assist you, I will tell you that it appears to me, although my mind is quite open as to what you may say upon it, that there is a limitation of 10,000 fully paid-up shares to the concessionnaires, and that £10,000 is to include formation, temporary works, administration, receipt and transmission of money, and consideration for the transfer of the concession. That is the way it strikes me. Where do you say is the obscurity?—The difference is in the last clause of that article. As we have it in the French here, that is a lump-sum contract.

3399. "Provided the cost of the construction shall not exceed"?—Yes. As it is here, it is: "Sous cette réserve toutefois que les frais de construction ne pourront excéder 9.600 livres sterling par mille pour autant que la construction coûtera en moins. De même le montant des actions et obligations à émettre ne pourra excéder 9.600 livres sterling effectives par mille." We are now upon the question of our knowledge and what we had to work upon at the time of the issue of the debentures.

3400. That is what we are upon now?—"Forasmuch as the construction may cost less." M. Aubert did not translate that.

3401. "Sous cette réserve"—provided always that the cost of construction shall not exceed £9.600 per mille. Now "pour autant que"—what do you say "pour autant que" means?—Clearly that should be "forasmuch as the construction shall not cost less."

3402. Or "as much less as the construction shall cost"?—I think not. I have among my papers the opinion of M. Waldeck Rousseau, the present French premier, whose opinion on that point has been taken, and a great number of other French authorities, and they all take the view that that was not so.

3403. What do you say it means precisely?—"Unless the construction shall cost less," or "forasmuch."

3404. That is not quite English?—No, it is not quite English, and I do not think you can make it English.

3405. "Unless the"?—No, it is not "unless."

3406. What do you say it means?—I say that that meant that the construction was to cost £9,600 a mile, unless forasmuch as it should not cost less, leaving it optional to the people who take it as to whether it cost less or not. Upon that point I have a good deal to say, because a good deal of our case depends upon that. We took all the opinions that were to be got at the time of the trusteeship on this concession, and in every way we did all we could, but I only point out to you that at that time this is what everybody was going on—there was nothing else existing.

3407. It is material that we should have the opinions if you have them?—Yes, I was going to make some observations at some length upon this. They are in French, and, unfortunately, I have not had time to translate them into English.

3408. Just summarise what your point is upon it. Assuming in your favour that this was a lump sum of £9,600 per mile, what is the inference that you draw from that premise as to the construction of the previous paragraph, namely, a maximum of £10,000 for promotion money?—This is only my personal opinion. It is a very important matter to the shareholders, and I did not want it to be said that this is the view of the company. It is only my own personal view, because I should not like to discuss with you a very technical legal point, and therefore hereafter bind the company.

3409. No, that would not be fair?—Would you repeat your question?

3410. Assuming the construction which I understand you seek to put on this lump sum clause, namely, £9,600 per mile—assuming that this is a contract for £9,600 per mile—it is your contention that that is the true meaning of it?—Yes.

3411. And as far as I can see you rule out the passage beginning "pour autant que" altogether, as not bearing on that point?—Yes.

3412. Supposing you are right, for the purpose of the argument, what bearing do you say that has upon the limitation of the promotion money clause which I have already referred to?—You are asking me particularly at the time of the debentures. We knew nothing about any controversy about promotion money or anything else at that time. If I am going to give my views upon the question I should like to do it at once, and I shall have to go into a good deal that happened in between, but at that moment we did not know what happened in Pretoria or anything else. If you take the position of my being a trustee, we had no knowledge of the ins and outs of the thing, or whether there had been more promotion money paid, or what had been done—absolutely none.

3413. So far as regards the point of time we are on now, you had not then considered this question?—We had no knowledge.

3414. You know now, do you not, that the whole difference between the contract price made with Louis Warnant and the sub-contract made with Messrs. Westwood and Winby—that the whole of that, that is representing, I think, about 490,000 in shares, was taken by Warnant and handed over to the Oppenheims?—No, £400,000.

3415. Then what happened to the £90,000?—It was £100,000 really that they had fixed upon as the sum which was going to be for administration (because I know everything about it now, I think, from the papers of the company) during the construction, and there were some observations made the first time the contract was discussed in the Volksraad and out at Pretoria, and, as a consequence, there was an arbitration between Louis Warnant and the company, and the £100,000 was adjudged not to be payable. He has never had it; it has really gone in expenses, I think.

3416. If that is so, I was not aware of it, but, making that statement, the difference between the contract and

the sub-contract, namely, £400,000 in fully paid up shares, went first into the pocket of Louis Warnant, and is it correct to say he was a mere conduit pipe in order that those shares might pass into the pockets of the Oppenheims and their associates?—Yes, and others. They had a considerable portion, but there were many others.

3417. I am not speaking of your knowledge of it. I am only asking for information to corroborate this?—That is so, sir.

3418. You have now become aware that that profit so arising—I am calling it a profit for the moment—on those shares so paid to the Oppenheims, was distributed between themselves and their associates, pursuant to a contract made before?—Those transactions between them I do not quite know.

3419. You have seen the documents that your representative has supplied to us?—I am most anxious to tell you everything I do know, but as to their private arrangements I do not know. They went to Louis Warnant, and how the £400,000 was used for paying up for the shares, and how they were then distributed among the various people, I do not know.

3420. Is not the contract between the Oppenheims and the Comtes de Bondy and d'Adhemar present to your mind?—Oh, yes; certainly.

3421. That contract is dated the 20th January, 1892, and the parties to the agreement are the Comte de Bondy, the Comte d'Adhemar, and Edward Marc of the first part, and the Barons Oppenheim of the second part, and, by Article 2, "it is recognised by the parties that, by common consent, a combination is to be carried out in virtue of which the net minimum profit shall be 12,250,000 francs in fully paid up shares"—that is £490,000 cash, roughly?—Yes.

3422. Therefore that is an agreement between the Oppenheims and their associates in Paris, that the whole of the capital destined for the share capital of this company shall be divided between themselves by common consent?—Looking at it from the outside, it is this, is it not? I have no knowledge whatever except what is written here, and I never saw this until years after; but is it not that d'Adhemar, Marc, and de Bondy shall get £70,000 without anything being deducted for expenses; whereas if you look at the contract with Porcheron of the 15th February, which was made just about the same time, you will see there they have to share in the expenses.

3423. These are the Parisian financiers—d'Adhemar, de Bondy, and Marc; and the effect of Article 2 is merely to give them £70,000 in shares net, is it not?—Yes.

3424. It does not appear so, does it?—The 1,837,000 francs is a fourth.

3425. (*Mr. Ashmore.*) The ultimate effect must have been that, of course?—If you refer to this contract with Porcheron——

3426. (*Chairman.*) "The net minimum profit shall be 12,250,000 francs in fully paid-up shares"—that is the whole—"or for the parties of the first part"—that is the alternative—"1,837,000 francs in fully paid-up shares"?—Yes.

3427. The point is that the whole of that which was destined to be the share capital of this company was, by antecedent agreement between the Oppenheims and certain Frenchmen appropriated to their own advantage?—The Oppenheims were to keep the rest—that is so.

(*Mr. Hume Williams.*) I do not know, sir, whether, after Mr. Thomas has completed his evidence, you would allow us, either to put through you or direct, such questions as you would think proper?

(*Chairman.*) We will consider it. I cannot say whether it will be allowed. Perhaps you will consider also, during the interval, the best argument you can use as to why you should do so?

(*Mr. Hume Williams.*) If you please, sir.

(*Witness.*) I wish just to draw your attention to the other agreement wherein it differs. There were two contracts made. In the Porcheron one, Porcheron provided for the payment of the expenses, but d'Adhemar did not.

3428. The Porcheron agreement refers to the division of the Oppenheim share—we will use a neutral term—between the Oppenheims and the original concessionaires in South Africa. The agreement to which I have just referred you is that which deals with and appropriates the share of the profits between the Oppenheims and the French financiers?—Quite so. I do not know whether it is very material (of course, I had nothing to do with all these things), but the balance that remained to the Oppenheims is again made use of in the Porcheron agreement, because Porcheron gets one-fourth of the full ten millions.

3429. I think that is correct?—I wish to point out that the original contract was submitted to and came to the knowledge of the Government before the company was ever formed, and the Government interfered to make the first contract with Porcheron £30,000 larger.

3430. It was made £30,000, in fact—I remember the correspondence and the expressions?—It is material to us, because the company's case for the holders for value of these shares is that they dealt entirely with Van Blokland, who was the authorised agent of the Government, and appointed by the Government with the knowledge of the Volksraad as the Commissioner, and under the concession had the fullest power of every description. He referred always to Pretoria before taking any steps. We never had, at any rate, I suggest, any direct relation with Pretoria. Our head office was in Europe, and we only had to deal with the Minister, and no decision of the Government was ever communicated to the company except through him. Therefore, our case, shortly put, is that we shield ourselves behind Van Blokland.

3431. You say, in the first place, that the improper profit realised by Vorster and Co., in the Transvaal—and when I say "improper" I mean the profit realised contrary to the terms of the concession—that, so far as you are concerned, is covered by the acquiescence of Van Blokland and by the privity of the Transvaal Government?—Yes, and by all the certificates he gave us afterwards.

3432. What do you say as to the second breach of that concession as it is put against you, namely, the appropriation of all the share capital of the company to the Oppenheims and their associates? If you wish to do so, or if you have looked into it, is there any document that you have been able to put your hand upon which shows any privity by the Transvaal Government, or by the Raad, with the transaction by which the Oppenheims and their associates obtained the whole of the share capital of the company?—We approach the case rather differently. I do not want to defend the Oppenheims.

3433. At present the only question I want to ask is if you have put your hand, in all your researches, on any document which shows the Transvaal Government or the Volksraad knew of that state of things, or that they approved of the Oppenheims obtaining the whole of the share capital of this company?—I will not say the whole, but I have put my hand on two documents which show that the Government were perfectly aware from the very first, and urged that the first clause of Article 25 should be broken. I can put my hand on twenty documents.

3434. I am aware of those—I know there are certain letters?—There is a great deal more than that that I can bring forward.

3435. I know what you say about it, but I ask that question advisedly—knew of the arrangement by which the Oppenheims obtained that large amount of paid-up shares—I am not asking about Porcheron or any Boer, but I am asking about the French financiers?—No, I do not know that I can.

3436. I have looked very carefully at all the documents you have shown us, and I do not see it for myself, but I am willing to be corrected?—Except by implication; but, of course, you will remember that Westermann, by appointment from Dr. Leyds and Van Blokland, was sent in January, 1894, to Brussels, where he was a fortnight, and then to Paris, and that he looked into all the accounts and made them a report, and that after that he saw the profit—that is, he found it out.

3437. I do not say it concerns you at all, but you know the Oppenheims, and, I suppose, know their case. That does not meet the point, because the Belgian court—I do not say they have rightly found, but at present they have found that these gentlemen falsified the documents and falsified the books, so that it appeared that a genuine payment of £400,000 had been made to Louis Warnant. You are aware of that?—Yes.

3438. And that the books were falsified so as to make that appear; whereas, in fact, no sum of money had ever been paid to Louis Warnant, and that those shares had come into his own possession as a conduit pipe for the Oppenheims and their associates. You know that?—Yes.

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3439. Therefore, any approval of certificates or any issue of debentures by the authority of Van Blokland does not seem, as at present advised, to have any bearing on that. Perhaps you can help me with that if you think the contrary?—That all comes round again, as every legal adviser or anybody who has had anything to do with this has said, to the question of whether this was a lump sum contract or not, and what I wish to say is that it is perfectly clear, and that we can show that the Government took the view from the very first that it was a lump sum contract. If it was a lump sum contract, all the Oppenheims did at Brussels was useless.

3440. Let me assume in your favour—I am far from saying it was the case—but assume it was a lump sum contract; if it was a lump sum contract as between you, the company, and the Oppenheims, who were making a secret profit of £400,000, how, as between you and them, could the construction of this contract affect the matter at all? Assume in your favour that they had a maximum of £9,600; they got Westwood and Winby to make it for £7,000 odd, and there is a very large profit on that. These gentlemen, the Oppenheims, are the promoters and directors of the company?—Yes, but it is Belgian law, which is different from English.

3441. As between them and you, how can any construction of this concession entitle them to retain as against the company, for whom they are trustees, the secret profit?—I answer that in this way, that we are advised by the best legal opinion we can get in Brussels that if they had a lump sum contract they were then entitled to pay up those shares by compensation. We are not dealing with an English company. What they are in trouble for, and have been prosecuted for, is on an absolutely technical point where they were utterly foolish and wrong, and everything else you may like to say in the way they did it; but if it should be held—and this is the point that the company have always shrank from deciding, and I should be very sorry indeed to advise the shareholders to test the point civilly—if it be held they had a lump sum contract, on which they have had numbers of most eminent opinions, under Clause 25 and under everything that happened, then what they did was entirely unnecessary. They could have paid up that capital as they did without infringing the Belgian law in the slightest way. That we have been advised by the best possible opinions.

3442. I note what you say. Article 25 of the concession you are familiar with?—Yes.

3443. And there is a further article of course saying that the share capital under the concession is £500,000?—Yes, and has to be paid up in cash.

3444. And is devoted by the terms of the concession to certain objects, construction, and working, and certain other defined matters?—Quite so.

3445. I am putting it quite shortly—the effect of this transaction between the contractors and sub-contractors is to devote that £500,000 not to the purpose for which it is to be devoted by the concession, but to the profit of certain individuals?—I do not think that is so.

3446. Why not?—Because of the Belgian law.

3447. I am taking it apart from Belgian law for the moment. I am only taking the plain reading of that concession as between the Transvaal Government and the Belgian company?—Belgian law will govern it, because the head office of the company is in Belgium.

3448. I do not know that that is so, but I will take it from you for the moment. What contradicts the plain construction of this concession, namely, that the £500,000 shall be applied—"The company will, for the construction and working and everything appertaining thereto, including all costs—a maximum of £10,000 out of a capital of £500,000"?—Yes, but supposing it is a Belgian company, and if it is a lump sum contract, that is merely substituting the difference in the contract for the payment up of the shares, and that was perfectly legitimate, and neither the Belgian court nor anybody else could touch them, only the thing was, they were doing it in all sorts of stupid ways in order to hide it up, I suppose. At any rate, the fact remains, and we can bring forward absolute decisions upon that point, that "apport effectif" is quite allowable, and although you could not do it in England, you can do it in Belgium, and it has been held by the Court of Appeal in Brussels that it is equivalent to paying up in cash, and that is part of our case. We say that they may have done these frauds, but it was the way they did it. The fact remains that somebody has got to prove, everything taken into consideration, that this Article 25 did not give them a lump sum. If it did give them a lump sum the way they did it was wrong, and they have been punished for it, but it was perfectly allowable under Belgian law, and that is why I was careful to remind you we are not dealing with an English company or with English law.

3449. I only want to know what your case is. You say that by Belgian law the Barons Oppenheim are entitled to make a secret profit, and never disclose it to the debenture holders, of what is virtually almost the entire share capital of the company?—If they had a lump sum contract, yes.

3450. If your construction of the section in question is correct?—Yes, but at the same time that is not our only case.

3451. I know?—I am not defending the Oppenheims. We have separated our case from theirs for years, and I do not defend what was done at all. All I am concerned with is our own position, and our own position is that although that may all go (I do not know what the result will be) that question still remains to be fought out, whether or not that was a lump sum contract, and I remind you also by Belgian law a bearer's share is paid up. If you have got a bearer's share it is evidence of its being paid up as against innocent holders. I am opening a number of doors I know that we have been going into for years. May I make one further remark that I omitted to make, and that is this, that if you will look at the documents I put in, I do not know whether its full importance struck you, but as a matter of law we are advised that the Transvaal Government appointed before the birth of the company their own agent to form that company, and advertised it publicly to everybody, and that if that agent did anything that was wrong the Transvaal Government can have recourse against him but not against the company, which at that time was not born.

3452. In connection with that, of course, the question that I asked you just now is relevant, namely, whether you can show by any document that Van Blokland had any knowledge of the obtaining of these shares by the Oppenheims. I am accepting, for the purpose of the argument at any rate, that they knew there had been a sub-contract to Westwood and Winby, but what I want to know is, taking you for the moment as being in the same interest (though I know you are not) as the Oppenheims, how do you say that any person in the Transvaal other than Blokland, or the Government of the Transvaal, or the Raad, was ever privy to the fact that this profit had been made, that the profit by the sub-contract had gone into the pockets of the promoters. You said you did not know of any such document, and therefore I do not see the relevancy of Van Blokland's position?—There are 25,000 documents, and I have not got them all; 7,000 have just been discovered in Brussels, but at the same time I should not like to say offhand that I cannot find any such document because it is a very large question. We do not care what becomes of the concession or anything else so long as our interests are protected. What I want particularly to impress upon you is that we are in the opposite interest to the Transvaal Government, and we say we had nothing whatever to do with the concessionaires. We say they were the agents of the Government, and the Government ought to look after them, and if they did not it is the Transvaal Government's look out. We only dealt with the Transvaal Government and their officials who gave every certificate that was required, and who we can prove absolutely were privy, and urged the interpretation of the first part of Clause 25 as being a lump sum. I can bring evidence that from the very beginning President Kruger was perfectly well aware, and undertook then and there to reduce the amount that Vorster and Co. were to get from £80,000—he said it was too much and he would get it reduced, and he did get it reduced to £30,000. How can you defend £30,000? You cannot defend £30,000. £30,000 is against your interpretation.

3453. I am not saying how I interpret it?—When once you open the door where is the quantum?

3454. I wish to appreciate your point fully upon that. You say you, the Transvaal Government, cannot rely on a strict interpretation of this clause because you yourself at a very early date were a party to its breach?—More than a party.

3455. Actually acknowledged its breach. I think from the letters you have shown us it is correct to say that President Kruger suggested it would be agreeable to him?—The Executive Council. I will point out that because Dr. Leyds would send a telegram.

3456. You say the Transvaal Government, President Kruger, or both?—Certainly.

3457. And President Kruger acknowledged the breach of this—he asked you to do things which on the strict interpretation of this could not be done?—Not asked us. The company did not exist, but he insisted on the promoters doing it.

3458. I understand that, and you appreciate this also, that that is not the same point as the obtaining by the promoters of this company of a profit which was undisclosed to their shareholders. What you have stated might make it legitimate as between the company and the Transvaal Government to exceed the £10,000 paid up capital, and that someone should make a profit, but it does not meet the point as between the company and the Oppenheims that they should make a profit behind their back?—It comes round again to the point, if this was a lump sum then they are entitled to make this profit, and do what they liked. It was all theirs and nobody was dealing between the company or the Transvaal Government, because they had £9,600 per mile, and if they chose to divide it up in that way and pay up the shares with it, or do what they liked, they were right in doing it. Directly you prove that was not a lump sum contract then comes in a great number of considerations. In the second line our case is that we had nothing to do with it at all, and we were told by the Transvaal Government that we were all right, and they decided long before we were born what was going to be done, but it comes round to that—they were perfectly entitled to make a profit, secretly or otherwise, if it was a lump sum. The distinction between the Belgian law and the English law on that point is what I think was not present to your mind.

3459. I tell you frankly it seemed so very odd that according to any civilised system of jurisprudence a trustee should be able to make a secret profit at the expense of his cestui que trust?—I do not think they are trustees—they are not in a fiduciary position as our directors are.

3460. Just follow me a moment as to that. Here is the Transvaal Government stipulating that there shall be a certain share capital of £500,000, and apparently, so far as language goes, that it shall be devoted to certain purposes, and upon that stipulation they say, "we will guarantee these shares and we will guarantee certain other bonds." The whole of that share capital is withdrawn from the company and put into the pockets of the promoters. Whatever they may say in Belgium, do you think that a foreign Government in the Transvaal would have ever recognised an obligation of such a kind?—I am not in the least surprised at the Transvaal action in Pretoria; it was only bluff the whole way through, as I shall be able to show you by the negotiations which resulted. They were very anxious not to come into court. They thought they would deal only with Oppenheims, but directly they got the company to deal with it was different.

3461. I am keeping you entirely apart. What chance would the Oppenheims have had if they had sued the Transvaal Government in the face of these provisions, whatever the Belgian law was? What chance would they have had of getting judgment?—You must consider this, that the company was made a Belgian company with the assent of the Government, and they can always say as they did with us: "We will not pay you, and you can do what you like." But the company was a Belgian company, and they had their own men with the company, who, according to Article 36, had the fullest control. If there was an English tribunal in Pretoria, they would say the Transvaal Government could not get out of the Belgian law. We have had advice and have taken opinions on this very point. I cannot put it any further.

3462. At present the only Belgian court which has given any decision on this point has been the Criminal Court?—That was *ex parte*, and the company are no parties to it.

3463. Surely the lump sum point was argued, and elaborately argued, before the Criminal Court by the Oppenheims?—Yes; I should like very much for you to study these opinions that we have got.

3464. But that is so, is it not?—Of course, that is only the Court of First Instance, and we have not heard the Court of Appeal in Belgium yet, and we were not there in any way.

3465. Section 27 of the concession says that the Government of the South African Republic guarantees to the company a minimum dividend of 4 per cent. on the actual paid-up capital of the company?—That is right.

3466. You see that the Belgian law says that is to apply to capital that was never paid up?—Yes, that is so. If they had got a right the debt is equivalent, and you can set off the debt. *Mr. E. Evan-Thomas.* 13 Dec. 1900.

3467. Then if a person puts into a prospectus—take the ordinary gold mining prospector—and if he sells as vendor some gold mining claims for £500,000 to a company, do you say the directors of that company by Belgian law would be entitled to say that £500,000 of actual paid-up capital had been subscribed?

(*Mr. Stephenson.*) I would suggest, supposing on a prospectus of that kind a vendor said: "I am selling to this company so much property, for which I have to receive so much in fully paid-up shares, and you file a contract, that is equivalent to the Belgian "apport effectif," which says you need not file any contract.

3468. (*Chairman.*) It is not quite that point. A vendor has sold, it may be, a worthless property to a company, and he is to be paid for that worthless property by half a million fully paid-up shares. Would the directors of that company be entitled to go to the public to obtain their subscriptions on a statement that £500,000 had been actually paid up? I do not think they would. However, it is rather an argumentative point. Perhaps I have got what you desire to say upon it, and I do not want for a moment to hold you by it; it would not be fair to the Oppenheims to hold that their case was exhausted by what you have said. You have raised the points that you believe they would raise, and, of course, they would be entitled to argue them hereafter if it ever becomes necessary for them to do so?—But I wish before we leave this question of Article 25 to draw your attention to a fact that you have not, perhaps, had brought before you, that Article 25 on the present contention of the Transvaal Government, and on Mr. Smit's contention, is absolutely unworkable, because Mr. Smit goes as far in his letter to us of 27th April, 1895, which was the first shell——

3469. No, it was not the first shell, by any means?—After the issue.

3470. After the issue, yes?—I hope I have made it clear that in appearing before you here I am not arguing the question, or wishing to have anything to do with any case of the Oppenheims or any people who may hold any of their shares. I am only the company, and I am rather afraid of committing myself, because I may be giving away some right of the company; but in anything I have said here I do not defend in any way, or argue before you, or put forward anything. All I say is that the Transvaal Government cannot get out of it with the company, and on that I argue everything; but I do not wish before you to argue points for the Oppenheims. We have nothing to do with them. Might I just refer on this, as showing that there is a good deal to be said for the view that M. Waldeck Rousseau and others hold about that Clause 25, that Smit in his letter to us says: "Should it appear to me that the amount of about £7,000 per mile which Messrs. Westwood and Winby have to receive, according to the letter of Louis Warnant of the 9th September, 1891, is not retained by them, I reserve with regard thereto the rights of the Government." That is to say, the Government, for the purpose of their case that Clause 25 is not a lump sum, are obliged to say that there is to be no sub-contract—"If I am going to find Westwood and Winby are making any profit I am going to have it back."

3471. It means if they find that £490,000 has gone where it ought not to have gone then they reserve their rights?—The £7,000 is after a deduction of that; that is the actual contract price.

3472. The balance between that and what you call the lump sum: "Should it appear to me that the amount of about £7,000 a mile"—that is to say, that is the actual contract?—£7,200 was.

3473. Yes. "Which Westwood and Winby have to receive according to the letter of Louis Warnant of the 9th September, 1891"—that is suggesting that Westwood and Winby?——They are not to make a profit.

(*Mr. Ashmore.*) No, it means there may be some second illicit profit.

3474. (*Chairman.*) It means that some of Westwood and Winby's profit might find its way into the promoters' pockets too, and if that was so, they reserve their rights?—That is one way of looking at it.

3475. How do you look at it?—That for the purpose of this Oppenheims were to make it for nothing. They were to subscribe for shares at £100 par, which they could not get for the debentures. What

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were they to get? They were to pass it on to somebody at the same price. How were they to pay Vorster or anybody else?

3476. £10,000 is a moderate profit even in the Transvaal?—But everybody knew they had to pay more than £10,000.

3477. You mean to Porcheron and Co.?—Yes.

3478. In August, 1894, as we heard last time, there was an issue of the debentures?—Yes.

3479. Did you have anything to do with that in any capacity?—Oh, yes.

3480. Were you trustee?—No.

3481. Were you a director?—No. Westwood and Winby were to be paid in debentures. They had given an option to various people that Mr. Macrae mentioned the other day, of whom I was one, of these debentures; and we negotiated with Van Blokland all the time.

3482. You were associated with the scheme at that time?—Oh, yes, with the debenture scheme.

3483. As a director of the Share Trust?—No, I was not a director; I was only associated as one of those who had agreed with Westwood and Winby to take the option of the debentures from them. Westwood and Winby were only too anxious to get anybody to do so.

3484. I want to know your exact position?—I was a member of the debenture committee, and as I knew French well, and all that sort of thing, and had lived abroad, I took a leading part in it, and went and saw Van Blokland.

3485. Before that issue did you have any communication with the Oppenheims, the directors of the company?—About the issue, do you mean?

3486. Yes?—Oh, yes. They were part of the debenture committee.

3487. Did they bring before any of you a correspondence which had taken place some months previously to that between themselves and the Government?—No, not at the time; but, of course, when it became a question of the Stock Exchange giving a quotation for the debentures we had it.

3488. When was that?—I cannot fix exactly the date. We only got the quotation for the debentures in September, 1895. There was a long delay about it.

3489. When was this correspondence first brought to your knowledge?—Before the issue of the shares.

3490. Early in 1895 or the end of 1894?—Yes, the end of 1894.

3491. The correspondence I refer to particularly is the correspondence beginning on the 12th June, 1894?—Yes, and ending on the 14th June, 1894.

3492. What were the circumstances under which that correspondence was brought to your attention?—I think there is a letter which I did not put in before.

3493. You shall put it in whenever you think right afterwards, but I want to know what the circumstances were under which this correspondence beginning on the 12th June, 1894, was brought to your notice? How did it come up?—It came up in this way. The authorisation of the Executive Council contains the conditions, and the resolution says in Paragraph 2: "That guarantee be given that all sums which cannot be reasonably raised against company shall be refunded." That is the resolution of the Executive Council.

3494. What does "reasonably raised against company" mean?—That was part of the conditions, and that led to inquiry.

3495. Does it mean, charged against the Government?—This did not come till later, but the first thing that was sent was the letter from Dr. Leyds, enclosing a copy of the telegram that he had sent to Van Blokland.

3496. That I know, but at the time of the issue of the debentures you told me you knew nothing about this?—Quite right.

3497. At the end of 1894 you did know of this. Now I want to know what brought this to your attention, and who brought it?—I expect directly we asked for this authorisation. At the time of the issue we went merely on the Minister's letter.

3498. That is the issue of the debentures?—Yes.

3499. You were informed at the end of 1894 of the matters contained in that letter of the 12th June, 1894. That correspondence was put before you, and in the letter of the 12th June, 1894, occurs this passage:—"The Government has been surprised and disappointed to see a report that several douceurs, amounting to a considerable sum, have been given for the purpose of furthering the enterprise." Then they ask for a statement by the Government of the so-called douceurs. Then the attention of the Government is drawn "to a certain construction contract, dated the 7th September, entered into by your company with Mr. Louis Warnant, of which knowledge has been brought to the Government by means of the said enquiry." That was the enquiry instituted by the Government in Europe—"and in which it is stipulated that the said Warnant shall receive a fixed sum of £9,600 per mile, the maximum allowed by the concession, and that for a definite length of 192½ miles, which is absolutely contrary to Article 25 of the concession, paragraph 7, which says that the cost of construction shall not exceed a sum of £9,600 per mile, or such less sum as the construction shall cost, and I have to inform you that the Government does not recognise this contract, and desires to abide by the words in Article 25 of the concession which I have underlined." Rightly or wrongly (I am not saying which way it is) that raises the construction, which is put upon it by the Transvaal Government, as clearly as it can be?—Yes, but I was going to say about that with all these papers that came there is also a letter from Baron Oppenheim to Van Blokland of the 4th August, 1894, in which he himself sent this correspondence to Van Blokland—the three letters.

3500. When was that?—The 4th August, 1894. Directly they got the telegram they wrote to Van Blokland.

3501. When did you see that—was it at the same time as you saw the rest?—Yes.

3502. The end of 1894?—At the time of the debentures nothing was done except on Van Blokland's letter. There was no question of going into authorisation otherwise.

3503. We have passed away from that. That letter you received with correspondence, beginning with June 12th, 1894, at the end of 1894?—Yes.

3504. Will you read it?—It is the 4th August, 1894, written to his Excellency Beelaerts Van Blokland, Minister Plenipotentiary of the South African Republic. "Your Excellency,—Confirming our interview of to-day, we have the honour to inform your Excellency that we have received from our Local Board, Pretoria, a cable as follows:—'Executive Council telegraphs instructions direct Beelaerts van Blokland, to approve issue of obligations 1,000,000 pounds sterling at minimum of 86 net, on condition that the concession be altered in accordance with the letter of the Secretary of State to the Local Board, also that guarantee be given to repay the sums unduly placed to the debit of the Company, and also that the proceeds of the issue be deposited in the joint names of Beelaerts and of a trustee of the company.' The modifications in the concession mentioned in this telegram are those which are treated of under the letters A, B, and C, in the letter of his Excellency the State Secretary to the Local Board of 12th June last. We have the honour to enclose your Excellency a copy of that letter. The company accepts the modifications above-mentioned, and informs its Local Board of this, officially, under date of 2nd August, 1894. On its side, our Local Board has under the dates of 13th and 14th June last addressed to the Government the replies to its letter of 12th June, of which copies are enclosed herewith. These replies explain to your Excellency the situation before the granting of the issue, and the sense of the above cable. The second point mentioned in this telegram is relative to the reimbursement by the company of the sums paid by it at the time of its constitution, and which ought not to remain to the debit of the Government." I see now from the correspondence which has passed between the Local Board after Mr. Smit's letter, that that referred particularly to a sum of £5,000 which was paid to Porcheron within ten days of the formation of the company. That was what was alleged to be the sum; and also a sum of £100 which the company had paid to Messrs. Barclay, the bankers, here for all their trouble in connection with the issue of the debentures. There was nothing about that, except in the ordinary course of banking business. They got £100 for work connected with the issue of the debentures. Those were the two sums, as I understand, they were talking of: "Here again we are agreed, and the company undertakes to carry to the credit of the Government such sums as after agreement between the Government and the company

shall be judged to remain in this category. It is impossible to give a better guarantee." Of course, sir, we might, all of us, have had our doubts about that. "The third point of the telegram is that relating to the appointment of trustees representing the Government and the company, in whose joint names the disposable sums will be deposited at a bank. Here again we are absolutely agreed. The Government having nominated your Excellency as its trustee, we have the honour to inform you that the company nominates its President to fulfil the same function. We have the honour to remind your Excellency how important it is to proceed rapidly with the issue, as much from the point of view of the continuation of the works as of the success of the issue itself taking into account the advanced date of the (financial) year. For this purpose we are going to London on Monday next. We have the honour to enclose your Excellency a prospectus that we have altered in accord with you, and that the Issuing Syndicate propose to publish. In consequence, we beg your Excellency to let Mr. Macrae, director of the Railway Share Trust, have as quickly as possible the letter to be set out in the said prospectus." Of course that letter or anything connected with it did not come up before us until the end of the year, but at any rate Van Blokland was immediately informed of the correspondence, and the answering letter of the company before he authoriesd the issue of the debentures, and I assume if he saw anything wrong in it he would not have allowed the issue of the debentures. The onus of proof I take it would be on any objector.

3505. "The second point mentioned in this telegram is relevant to the reimbursement by the company of the sums paid by it at the time of its constitution, and it ought not to remain to the debit of the Government." That is a specific undertaking in very broad terms to refund to the Government any sums paid by it at the time of its constitution improperly?—It says "after agreement."

3506. No. "Here again we are agreed"?—It is "after agreement." There is first to be an agreement between the Government and the company as to what those sums are—carried to the credit of the Government such sums as were agreed."

3507. That is not the passage I am referring to—"The second point mentioned in this telegram is relative to the reimbursement by the company of the sums paid by it at the time of its constitution, and which ought not to remain to the debit of the Government. Here again we are agreed, and the company undertakes to carry to the credit of the Government such sums as after agreement between the Government and the company shall be judged to remain in this category. It is impossible to give a better guarantee."

3508. I think you are entitled to make the observation as to the agreement as a matter of account; but in general terms there is a guarantee to refund to the Government all improper promotion moneys—to put it quite shortly?—Must you not take that in connection with what were the claims of the Government at that time.

3509. Yes; but the letter of the 12th June from Dr. Leyds specifically reserved this point?—But will you look at the letter which Mr. Smit wrote?

3510. The letter which began this correspondence was from Dr. Leyds, and it was put very clearly with regard to the fourth stipulation—the Warnant contract and the non-recognition by the Government of the contract, and the declaration to abide by Article 25, which is very plainly pointed out in their view contemplated the contract price as the less sum. You cannot say that that point was not raised?—Will you look at the company's reply of the 14th?

3511. I know there is an elaborate reply?—Will you look at the last paragraph? This is precedent to the granting of the issue.

3512. I am not talking about the issue. I am talking of the correspondence, and when it reached you. This reached you at the end of 1894?—That is right.

3513. The letter of the 12th June reached you at that time, clearly pointing out the objections to the Warnant contract?—Quite so.

3514. It was accompanied by a letter which you say explains the matter, in August, 1894. It is pointed out to you that that very point is reserved in the letter of the 4th August, 1894, and that the company then undertook the remission of sums paid in connection with the promotion improperly, or in connection with its constitution?—But you must take the two letters together This was a transaction.

3515. Yes; I am quite ready to take the transaction?—It is clear from that that Dr. Leyds' letter of the 12th June raises an objection; in the first place, he says the Government wants alterations in their favour, and he then raises an objection to the Warnant contract and to the *fooien*, as appears from certain letters which have since come before me, from Mr. Smit to the local board; they were two sums, one of £100 paid to Messrs. Barclay, and the other £6,000 that was undoubtedly paid to Porcheron, according to the contract of the 15th February. Instead of being paid by the Oppenheims it was paid by the company; that disposes of the question of the *fooien*.

3516. Is *fooien* the Dutch for *douceur*?—Yes.

3517. (*Mr. Loveday.*) It is really the Dutch word for fee?—I think in Dr. Leyds' letter the word is *fooien*, but I wish to be precise on these points, and there is no point about the fees. The Oppenheims at once admitted the company ought not to pay that £6,000, and satisfied them about the £100. That disposes of that. Then that is all that Baron Oppenheim alludes to, I take it, in his letter of the 4th August, because he specifically says that the Louis Warnant contract is on a different footing. Dr. Leyds says on the 12th, "I want samething more, and I object to the Louis Warnant contract." The company replies on the 14th June, "We would point out that unless the Government agrees to withdraw its opposition to the contract with Louis Warnant, of the 7th September, 1892, the construction will have to be immediately stopped pending the decision of that question." Dr. Leyds says, "All these questions have to be settled before we guarantee the issue."

3518. (*Chairman.*) Yes; that is so?—Therefore that is a condition precedent, and if they grant the issue, then the questions are settled. At least, we are entitled to say so, I take it. "We would point out that unless the Government agrees to withdraw its opposition to the contract with Louis Warnant, of the 7th September, 1892, the construction will have to be immediately stopped, pending the decision of these questions by arbitration, as stipulated in Article 4 of the concession. The company must protect itself, and if it considers the contract in question a good and effectual one, the company, now that the Government have taken objection thereto, cannot go on with the construction until it is decided whether the contract in question is a valid one or not." I think, sir, you have clearly in your mind this condition of Dr. Leyds.

3519. I have read that?—It is a very specific condition.

3520. It gives his idea about it, and informs you that the Government does not recognise this contract?—Then he says the issue shall not proceed until satisfaction is given. Then the company reply, "All right; if you object to the Warnant contract, let us go to arbitration, and we will stop the works." And then they authorise the thing with this.

3521. That authorisation, is that the letter of August 4th?—Oh, no; the authorisation is the 31st July, 1894. May I read it, because there is rather an important clause in it. We had a great difficulty to get it; it took us a year to get it.

3522. The copy of the Resolution of the Executive Council is dated the 31st July, 1894, and the date you have put on my copy is the 1st June, 1895?—That is when we got the copy.

3523. What is the date? Have you the original letter of Dr. Leyds?—The Resolution is the 31st July, and he sent it on the 1st August.

3524. I want to know whether that is so. You understand the points very well indeed; but I cannot see how this is going to help you on this particular point, because, whenever it was sent, the stipulation is, "You may authorise Selati obligations"—that is, the issue of the bonds—"on my conditions, that concession is modified, if warranty be given that all sums which cannot reasonably be raised against the company shall be refunded?"—Precisely.

3525. You are putting that as if the condition that your people had required, namely, the cessation of work unless they permitted the issue, has absolved them from their obligations, if any, in respect of the contract with Warnant, and in respect of the payments

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attending the constitution of the company. But that point is expressly reserved. "That a guarantee be given that all sums which cannot reasonably be raised against the company be refunded"; and on August 4th you say, "Yes: the second point we are agreed upon, and we will do so."—Yes; after agreement.

3526. I understand your point, if it is future agreement?—But my point is, I did not have anything to do with this letter.

3527. I understand. You are representing the company, and you are only assisting us to the best of your ability on the Oppenheim case?—There is another case there, that if anybody was to blame it was Van Blokland, because he was told he was not to do it unless he got a guarantee. He took the guarantee, and allowed the issue. I do not say it is an answer for the Oppenheims, but I say it is an answer for us.

3528. I do not see what it has to do with you as regards the debenture issue?—No; I am talking now about the shareholders. It is very important.

3529. Now, we want to get on. We have arrived at the end of 1894, and we have arrived at the point at which the correspondence, by your own admission now, has been put before you, showing the controversy existing, and in which the rights of the Government are reserved. When did you become a director of the Selati Company?—About the middle of February, or the end of February, 1895.

3530. Not the end of February, was it?—The 22nd, I think. The first board I attended was in March.

3531. When did you become a director?—I was appointed some time in the middle of January, I think, subject to confirmation; but the first board I attended was some time in March. I only attended two, and there were only two, as far as I know.

3532. The directors, at the time you were appointed, were the two Oppenheims, Robert and Eugene, and Carl Braconier?—Yes; and Robert Oppenheim was the chairman or the president, who carries on in a foreign company.

3533. At that date, or at what date, did Robert Oppenheim deposit the £300,000 shares or more? You know the figures, I daresay?—£300,000.

3534. At what date did he deposit those shares, which was a part of the Warnant profit, with Barclay, Bevan, and Co.?—About the middle of January.

3535. Did those 300,000 shares represent the entire holding of the Oppenheims and their associates?—No; there were 1,290 shares of English people who bought them.

3536. Included in that 300,000?—Yes; all the rest were Oppenheims' and their people. There were Mr. Macrae and the Railway Share Trust's and mine; we had all bought them in October, and we gave £16 apiece—that is, roughly speaking, 13,700 shares for the Oppenheim's associates.

3537. That was the whole of the Oppenheims' holding?—No.

3538. What did they retain, anything?—I do not know what they retained.

3539. Did they, in fact, deposit all the shares that they held?—I think not quite all. There must have been their qualification as directors.

3540. But, as far as you know, with that exception?—So far as I know. I have a list here, but I only had this list a year ago.

(The witness handed in the following list.)

NORTHERN RAILWAY OF SOUTH AFRICAN REPUBLIC.

LIST OF SHARES SOLD IN LONDON, 1895.

Albert Mélot	158
Louis Warnant	148
Em. Terwangue	1,200
Henri Warnant	600
Ed. Wolff	60
Carl Braconier	800
H. Porcheron	538
Aux Mandataires de Vorster Porcheron et Stephenson	800
Au Comte de Bondy	283
Au Marquis de Beauvoir	574
Carried forward	5,161
Brought forward	5,161
A Ernest Mélot	10
Abbé Sire	400
Docteur Franck	288
Leroux	12
Mairet	12
Railway Share Trust	297½
C. C. Macrae	149
F. Pavy	149
Edmund Evan-Thomas	595½
Mercantile	100
R. et E. Oppenheim	595½
R. et E. Oppenheim	7,231
	15,000

3541. I see Terwangue 1,200 shares; he was one of the group, I think, and Louis Warnant?—There is a clergyman there, the Abbé Sire, who has got 400. I do not know who he was.

3542. At all events there are 15,000 altogether?—Yes, 15,000 out of 25,000.

3543. 15,000 was the total amount that was sold?—Yes.

3544. All that 15,000, with the exception of Mr. Macrae's and the Railway Share Trusts and yours, and the Mercantile, they were all the Oppenheim group?—Yes; but, of course, as they were "bearer" shares, until I got, amongst other papers, that list a year ago I had never any idea whose they were.

3545. Did you know of the deposit of these shares with Barclay, Bevan and Co. at the time?—Yes.

3546. What did you understand was the object of that deposit?—Their being sold.

3547. What was the next dealing with them after that deposit—who purchased them?—They were sold according to the prospectus.

3548. There is no mention on the face of the prospectus of the Mercantile Development Company?—No.

3549. Were they, in fact, the vendors?—No, I do not think so.

3550. I think they were. If you look at the trust deed, "The Mercantile Development Company, representing the vendors"?—Yes, representing the vendors.

3551. When were those shares, if at all, transferred to the Mercantile Company?—They were "bearer" shares.

3552. They remained at Barclay, Bevan and Co's. during the time of the prospectus and issue?—Yes, and they are there now. They have always been deposited there, and the certificates issued against them.

3553. I see that you signed the trust deed as the chairman of the Mercantile Development Company?—Yes.

3554. I do not appreciate the position of the Mercantile Development Company. Why did they come into it?—It merely wanted somebody.

3555. I do not understand that—why did it want somebody. We have got the transaction now quite clearly, and what it was, in fact, was the disposition by three directors out of four, and by the fourth to you yourself of the whole of the shares that were put upon the English market. That is the transaction?—No, sir.

3556. Forgive me; you have now put into my hands the names of the holders of the 15,000 shares, which you say were going to be issued?—Sold.

3557. "Issued" was the phrase you used. I call it sold?—Sold.

3558. Sold on the English market. That represents, as you quite correctly tell me, practically the entire holding of the French connection and the holding of Mr. Macrae, yourself, the Railway Share Trust and the Mercantile Trust?—Yes.

3559. That is to say it represents the holding, and the entire holding as I gather, of all the French group and of yours?—No, not all the French group. There are 10,000 shares beside; we insisted that we must have the control of the company if there was any sale in England at all.

3560. If you say there were 10,000 shares more where were they held?—I have been trying to find out. There is the name of d'Adhémar.

3561. You do not know where they were held?—No.

3562. I think you must be able to find out, if you do not know now. This embraces the entire holding of the Oppenheims and Braconier, with the exception of their qualification shares?—Braconier's were all in the hands of the bank long before, and they were sold to the bank, and the bank have got 2,000 now.

3563. Then Braconier had no qualification?—Oh, yes.

3564. I am speaking of the entire holding of which he had the disposition?—I cannot tell.

3565. But what do you believe. You seem to know that all the Braconier shares were in the bank's hands?—I have been trying to find out where the balance of the shares have been, because it was necessary for us, if there was any question of negotiation or sale during the last four years, to know where they were.

3566. I want to know to the best of your knowledge?—The 2,000 were in a Belgian bank.

3567. Whose are they?—I believe Braconier's.

3568. They are not in question, because they are deposited for security?—Braconier's are in the bank.

3569. They are the holders?—Yes. Then there is another bank that holds some for Vorster—a bank here in London.

3570. What I want to know is about these three gentlemen. You are able to tell us, are you not, whether Braconier had at this time in February, 1895, more than 800 shares at his disposal?—I cannot tell you. I have no knowledge whatever. All my knowledge is a sheet of paper with the figures that I have handed in, which I got about a year ago. I wish to say this further. That fortunately for the English certificate holders there was only about something over £200,000 outside the English Trust.

3571. We will come to that in a moment?—I will put it in this way that we have some of the Oppenheim shares, and the certificate holders have some certificates which belong to them.

3572. Are you able to tell me whether this in fact does not represent the whole or nearly the whole holding of the Oppenheims?—I say it must, but I have no knowledge; it was never anything to do with me—they were bearer shares, and it is not as if it was a registered company, but I believe it is the greater part if you ask me my opinion. I have no knowledge, but I will try to find it. I should be glad to know. There are only 10,000 shares outstanding, and there are 2,000 in the bank—that reduces it to 8,000; and then there are d'Adhémar and Marc's—none of those appear there. They have got a good lump. Then some of those that went to the Transvaal were bought by somebody in London here years ago—I do not know how many he has got at all, but I daresay 800 or 900, that must represent nearly the bulk, but I have no know-[illegible]e.

3573. You were interested yourself personally in the [illegible]ue which took place in February to the extent of 595 [illegible]res—personally?—Yes.

3574. And as chairman of the Mercantile in 100 [illegible]?—Yes, we had all bought them.

3575. You were at the time of the issue a Director of the Selati Company?—Well, I was; I had not joined; I was on the prospectus.

3576. Is any glimmer of information given to the public who were asked to subscribe for those shares that the substance of the transaction was the sale by four Directors of the Selati Company of practically their entire interest in the company?—I do not think so.

3577. Take the prospectus in your hand, and can you refer me to anything in that prospectus?—They were bearer shares.

3578. Do not you think that the public, or the persons in the English market who were asked to subscribe, were entitled to be informed by those who were offering these shares for subscription, and who appear on the face of the prospectus of the Selati Company, that those shares were practically their entire holding in the company—their entire interest?—I joined particularly to represent the English shareholders. I had my qualification, and I bought shares of my own. Of course, now, at this moment, I quite admit in the light of all we know now (and I shall have an opportunity of showing that later), but when that issue was made there was no suspicion on our part that there was anything wrong.

3579. We must judge of that, but if you were there specially to represent the English shareholders—I do not wish to say anything harsh—but it does seem a remarkable way of bringing the real facts of this issue to their attention, when you say there is nothing in the prospectus at all which can convey to them in any way that these four Directors who appear as Directors of the Selati Company were unloading the whole of their interest on the market?—In the first place we none of us knew to whom the shares belonged. They knew they were bearer shares, and we did not know whose shares they were; moreover, the whole thing was then done with the assent and knowledge of Van Blokland.

3580. Are you really prepared to pledge yourself here that you did not know those shares belonged to your co-Directors;—just think what you are saying?—I knew they must have originally.

3581. You must have known it?—It never occurred to me.

3582. Surely you are an experienced man of business. Just put yourself in the position of an investor. What sort of price would you give for a share when the circumstances attending its issue are these, that those who know most about the company and who are directors of the company are disposing of their entire interest, and this after a controversy had arisen between the company and the Transvaal Government?—That had all been settled. I have not had an opportunity yet of going into the papers. We had the certificate from Van Blokland that it was all right.

3583. But you put your name to this?—Yes.

3584. I will not go over what we have done before, but before you put your name to this you became aware of this controversy between the Transvaal Government and the Oppenheims?—But it was settled.

3585. We know what the state of things was. After that controversy had arisen these persons, virtually the Oppenheims to whom this correspondence was addressed, unloaded all their shares upon the English market, and you as a co-director with them unloaded yours also. How much do you think the public would have given for those shares if they had known those facts?—As a matter of fact, I did not unload all mine.

3586. I only used that word because you used it just now. I withdraw it if you show me you were not unloading your own shares, but I understood you to say that those 595 shares standing in your name was the whole of the holding that you had except your qualification. That was so, was it not?—Yes.

3587. Then I put it again to you?—I subscribed at the time of this issue for more.

3588. I want to ask you, that being so, having recited to you those facts, what was the meaning of the introduction of the Mercantile Development Company into this affair at all? Where was the need of their existence?—They came in because there was a trust deed, and the trust deed was my doing. I was determined that we should not have anything to do with these shares here unless we had the control, and to have the control it was necessary to put them into a trust. I cannot say now exactly at this distance of time, but I have no doubt I was advised at the time that that was right. All the Mercantile Company got was £1,000.

3589. The form of this transaction, I tell you quite frankly, strikes me as remarkable. If you look at that prospectus (I have looked at it very carefully) it does not present to my mind anything like the reality of the transaction?—No, not as we know it now.

3590. Let me draw your attention to this—this is the statement: "The company has a capital of 12,500,000 francs (say £500,000 sterling) divided into 25,000 shares of 500 francs (say £20) each, to bearer, fully-paid. There have been issued in England, with the approval of the Republic, bonds of the company to the nominal value of £1,500,000. The South African Republic (the Transvaal) guarantees both the principal and the interest of such bonds. The South African Republic also guarantees to the company, under its concession, an annual minimum dividend of 4 per cent. on its actual fully paid-up capital. The Republic, after the audit of the accounts for the year 1893, made payment, in July, 1894, of the guarantee down to the 31st December, 1893." That conveys to me that the Republic had paid the first dividend on the shares?—So it had.

3591. Where was the fund derived from?—The Government paid it itself.

3592. Are you sure of that?—Absolutely; it was in the letter from Mr. Smit.

3593. "The contract for the construction of the rail-

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way was made in 1892, and the works commenced soon afterwards. The chief engineer of the company certifies that the rails for 75 miles are already laid, and that he anticipates a successful completion of the whole line without difficulty within the terms of the concession." Had the works at that time been arrested?—I do not think so; not that we knew, because they were not arrested until August, 1895, finally. There was our chief engineer's certificate. May I just say this, that as I said to you before, there is no question that things were concealed from us by Oppenheims and Van Blokland.

3594. I do not think it is really any good going back on that. What you have told me is that you knew that the Oppenheims were disposing of their entire interest?—No; that I did not, at the time.

3595. We have what you said upon the notes. You also said you knew of the controversy, and had seen the correspondence?—The controversy which was all settled.

3596. I know what you say about that. Then the prospectus goes on: "The shares now offered having been acquired at various times, and being represented by share certificates to bearer, bearing miscellaneous numbers." What did you intend to convey by the statement, "The shares now offered having been acquired at various times"—having been acquired by whom?—All sorts of people. Now, in the light of all these events, you can say, "This is the Oppenheim group"; but I cannot say that some of these people may not have paid for them. I do not know whether they did or not; but I was absolutely ignorant of who they belonged to. This list was furnished amongst the papers at the trial, and that was the first I knew as to who the shares belonged to.

3597. It is no good your saying that, because you told me just now that you knew perfectly well who the shares belonged to?—I knew they were represented by Oppenheims, but I did not know it was their full holding.

3598. Is it a usual thing for an issue of shares, or what you have called an issue of shares—shares really offered for sale in a prospectus in this way—is it an ordinary thing?—Under those circumstances where they are already issued, yes. The capital was already issued and there was only a part of it sold.

3599. The way it strikes the ordinary reader is that this was an issue for subscription of shares which had been acquired by the company—that is the way it reads to me?—No, the issue was not on behalf of the company.

3600. No, it was not, but prospectus begins "The company and the concession which is now vested in the company" and then you deal with the rights and the capital of the company, and then you come on to this 6th or 7th paragraph, "The shares now offered having been acquired at various times"—I do not say it is so, but I only want to have your view—Do not you think that is a form that is at any rate not very lucid?—It may be so, but all I can say is that that was intended to be an accurate statement of fact.

3601. Let me draw your attention also to the form of application headed "The Northern Railway of the South African Republic. Form of Application for a Certificate relative to Shares." It is the ordinary form of subscription to a company, the real truth being that this company was going by this issue to absolutely change its character—that is to say, it was going to become, and did become in a large degree, an English company, these Belgians and yourself having divested yourselves of all your interest in it?—The whole object of this, as far as English shareholders who paid money for these shares was concerned ———.

3602. I know they paid money, and a great deal of money too?—I say that all these names of the English people in the list had all paid money for their shares.

3603. I daresay?—We paid £15 16s. for them all. They were all different sorts of numbers, and the Stock Exchange will not give a quotation for following numbers. Of course, on the assumption that I am Baron Oppenheim, and I am Braconier ———

3604. I am not putting it in that way, because you are not?—I do not deny that these people landed us. I have never denied it.

3605. Supposing it was a perfectly good thing, and there had been no controversy between the Government who had guaranteed the interest, is it not an extraordinary act that a gentleman who is becoming a director of the company should offer his own shares and offer his co-directors' share without saying so to the public—is that not a circumstance most material to be disclosed in such a transaction?—As regards my own share I did not divest myself of all my shares, because I bought some more.

3606. But if you were divesting yourself of nearly all, you knew you were divesting yourself of nearly all your holding in the company, of which you had just become a director, and you knew that your co-directors were disposing of all theirs, or nearly all theirs, and yet there is no mention made of it at all, and in the trust deed the Mercantile Trust, of which you were chairman (which is another fact not disclosed here), are the vendors, so that the transaction is really effectively hidden?—I wish to point out that the whole basis of the whole security and everything is these letters. Things were not considered to be as they seem now to you. We had a certificate from Van Blokland, who would know anything that was going on in the Transvaal, and with that knowledge that there was going to be a sale in England he gave his certificate.

3607. Why was it at this moment, which, I believe, was the first moment at which these shares became free—because I understand they were pledged before—why was it that these men all unloaded on the English market at this time?—I beg leave to say it was we on our side who insisted it should be a big block, in order that we might have the control.

3608. Why was the moment selected the moment after this controversy had begun, in order to induce people to buy the shares?—I deny entirely we were aware of any controversy with the Government.

3609. You told me five minutes ago you saw the correspondence?—Of course, but that controversy was settled.

3610. If you say so, but the documents speak for themselves?—I do not think that that is so.

3611. Does it not strike a man of business and of intelligence as being a remarkable thing that all the directors of a company are wishing to get rid of their shares at a particular date—is that a usual thing?—No.

3612. What would the shareholders think of it?—It is in the light of subsequent events.

3613. No; I am taking this event isolated. Supposing the whole of the Directors of the Bank of England, for instance, were at a certain date to divest themselves of every one of their shares, would a shareholder even of that institution feel very comfortable?—I had no knowledge that the Oppenheims were divesting themselves of all their shares. They and their friends were putting in 15,000 shares, and I was insisting they should put in a large amount; if your view is correct it seems to me it is the last thing I should have done to have insisted on having a trust which gave us the control. I do not know whether the Oppenheims knew there was any trouble coming. I think they thought there had been trouble, and they thought it was settled, or else they would not have put their heads in the lion's mouth.

3614. Their heads were put into the lion's mouth to the tune of getting this floated at 90¾ per cent., and of getting entirely quit of a railway and a concern, as far as shares were concerned, upon which one dividend had been paid, but never another—that is the extent of putting their heads in the lion's mouth. They came out with a very, very large profit on shares that have proved since not to be worth sixpence?—With regard to the dividend on the shares nobody could tell till July, 1894. There was no more dividend due till July, 1894. You said "never another."

3615. I know you might not have known the danger in which these shares were placed, but you had the documents before you in which you get the Transvaal Government giving its view of the matter, and you had the investigation of Mr. Westermann. I know what you say is that you thought that was cleared up by Van Blokland?—But the dividend was paid after the investigation. The Transvaal Government cannot have it both ways. They cannot say they knew, and they did not know. The dividend was paid afterwards.

3616. Take it the controversy was in an advanced condition at the end of 1894, and it ripened into an absolute repudiation by the Transvaal Government of all liability on this guarantee in June, 1895; that is within about four months of when this prospectus was issued in this form?—Yes.

3617. When was the first public statement of the alleged fraud perpetrated by the Oppenheims, or alleged

to be perpetrated by the Oppenheims, made by Mr. Smit, the Railway Commissioner—1896, was it not?—Yes. You mean he made a complaint to the Belgian Government?—I think that was in July.

3618. July, 1895?—Yes.

3619. You being a director of the Selati Company then?—Yes, but they were not plaintiffs.

3620. I was going to ask you in what form was it done?—It was quite private.

3621. Between himself and the police authorities?—Between himself and the police authorities.

3622. When did that come to your knowledge?—It came to my knowledge when they came and took the company's books; that was about July, 1895.

3623. Then in July, 1895, when they took the company's books, I suppose they had to justify even in Belgium the taking of the company's books?—No.

3624. Did they walk in and take them as they liked?—Yes; I have never seen the company's books.

3625. Were you chairman of the company then?—No.

3626. Or afterwards?—I was, on the 25th June, 1896. There was nothing done the first year.

3627. Would you give me the date—was it 1895 or 1896 when you became chairman that you were fully informed as to the charges made against your colleagues? No, sir. What happened was this: Mr. Smit made a general complaint, and nobody was mentioned at first, and then it was specified by the names of Oppenheim and Braconier, Warnant, and others. Nothing was done with that till 1898, when they really took it in hand, and our defence had been put in in Pretoria; the thing slept.

3628. Did you know the nature of the charge—I am not speaking of the currency of the proceedings, because they did not come to a head till 1899. The trial did not begin till 1899, but there was, I suppose, a great number of preliminary enquiries?—It is all secret.

3629. But I suppose your colleagues were interrogated?—Yes.

3630. There were the usual *interrogatories*?—Yes.

3631. That took place, I suppose, quite early?—No, I think the *interrogatories* only began in 1898.

3632. When was the nature of the criminal proceedings which were being taken against your colleagues known by you?—I should think certainly not till 1896; they did not formulate anything before that, I think.

3633. How many shares were bought of this issue?—About £200,000, and the Oppenheims subscribed and paid for the balance, and as they had not had their certificates at the time in June, 1895, they have remained here ever since. The first thing I did was to see they remained here.

3634. Since 1896, when you knew this criminal charge had been formulated, and what it was, have you done anything in Belgium to protect your shareholders?—Yes. In 1896, as soon as I became chairman, we changed our lawyer, and we have got the very best lawyer in Belgium now. The secretary only joined in 1895, and he was not concerned in those early matters, and he has remained, because somebody must remain who knows all the ins and out of it. I became chairman, and, as I say, we had another lawyer, and have been acting under his advice ever since. We separated ourselves entirely from them.

3635. Is there not a process in Belgium known as *partie civile*?—Yes, but in the first place, supposing they had been condemned, we should have been cutting up our own title, and we considered whether it was advisable. In the next place if you make yourself a *partie civile*, and you do not succeed, you are saddled with the Government's and everybody else's costs.

3636. Is not the effect of the *partie civile* such that if you were there present as a *partie civile*, that is to say, if these shareholders complained of fraud having been committed on them by the Oppenheims, and it was decided that such a fraud had been committed, would they not be entitled to judgment also?—I do not know, I am sure.

3637. You knew what the *parti civile* was; were you advised on it?—As to whether we should make ourselves *partie civile* or not?

3638. Yes. I tell you why I ask the question, and that is because the rights of many of the people you represent, I am informed (I do not know whether it is so) have now expired by what they call their Statute of Prescription?—Against the Oppenheims you mean?

3639. Yes; if what is alleged is correct, that the Oppenheims perpetrated a fraud at their expense in the first place by taking this paid-up capital, and in the next place by unloading their shares upon the English market without disclosing the fact; if they did, would it not have been a prudent thing to have been present at the trial in order that the responsibility of the Oppenheims might have been declared before the time had expired? I do not know that it is so, I am merely putting it hypothetically?—I do not know, but this I do know, that when the bother arose there was a committee of the certificate holders appointed, and they had a solicitor, and everything we have done has been in concert about that. I know the Oppenheims have got nothing; if this thing goes against them they are ruined, and therefore there was nothing to be got out of them. We have £100,000 worth of their shares here in London. *Mr. E. Evan-Thomas.* 13 Dec. 19

3640. Then it was considered whether any recourse should be had by the shareholders against the Oppenheims?—I should say so. We have done nothing but talk about it. I do not say specifically as to whether the company should join, because I think the view rather was that if we had joined we might be injuring our title, but if you mean that our body was shielding the Oppenheims I say absolutely, no. The certificate holders' committee were absolutely aware of everything that has been done, and every letter that has been received. They were aware we had these shares of the Oppenheims.

3641. When was the Committee of Shareholders formed?—In 1896.

(*Mr. G. H. C. Lea.*) I may say, sir, I am the solicitor to the committee.

3642. (*Chairman.*) What was the occasion of its formation?—We held a meeting of the certificate holders.

3643. That is the shareholders?—The English shareholders.

3644. What was the occasion of the holding of the meeting?—The first meeting of the trustees of the certificate holders after repudiation.

3645. The repudiation was the occasion?—Yes.

3646. Were the facts which are alleged against the Oppenheims brought before this committee?—As far as we knew them. We knew nothing of them till July, 1896; that was a year after.

3647. You say the committee was formed in 1895?—No; in 1896 the committee was formed. The yellow book that you have seen, I believe, was published by the Oppenheims, and printed by them in June or July, 1896.

3648. To your knowledge was that printed and circulated by the Barons Oppenheim?—It was not circulated. Mr. Stephenson and I went over to hear it read before it was printed. We were asked to come over in June or July, 1896, and I was given a copy, and I took the trouble two days ago to exactly mark the documents we knew before it came out. There were 98 up to the date of Mr. Smit's letter, out of which I had seen 20 at the date of his letter.

3649. Was it sent to you as from the Barons Oppenheim? How did it come into your possession?—It was sent to me either through the secretary or by the Barons Oppenheim.

3650. You have not any doubt that it was written by the Barons Oppenheim?—No doubt whatever.

3651. I do not want to look at it unless it is genuine?—It is absolutely genuine, and most of the original documents are here. Mr. Stephenson reminds me that when the trouble came, and the disagreement with the Government, the company had nothing. We did not know anything about the facts; we had not a single paper of any kind, and until we got this in 1896 we had not a single rag of anything except these documents, which were disclosed in the various prospectuses. Out of 98 documents in that yellow book there were 20 that we had seen, all of which were official letters from Van Blokland, and the contracts.

3652. I do not like to put questions that give pain, but you compel me to say this: You were in February, 1895, a director of this company, and put your name to the prospectus as director of the company, and you entered into details which I suppose you thought would commend themselves to the subscribers for those shares. You are bound surely, are you not, to have informed yourself to the best of your ability, about that company formed?—We took enormous trouble about it, and went into all the documents and everything else, and it

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ended up with the certificate which was got from Van Blokland.

3653. It was pointed out that the repudiation of the dividend took place in June, 1895?—Yes.

3654. Then that was not the occasion on which the Committee of Shareholders was appointed?—No, there was no meeting till July, 1896.

3655. Then it was a year after the repudiation that the Committee of Shareholders was appointed?—The repudiation was only pending investigation, and negotiations went on for the Government to pay the interest, and it was thought they would. Then there was a negotiation between the Government and the Oppenheims at the beginning of 1896. Of course, the Oppenheims were anxious enough to enter into negotiations, only we would not agree to the conditions entered into, which were subject to the consent of the shareholders, and in June, 1896, the shareholders refused to acknowledge it.

3656. You cannot speak for the shareholders—I will ask Mr. Lea about that. But, so far as you are concerned, I want to have the reason why you took no proceedings whatever against the Oppenheims from July 1895, when this repudiation took place, to the present moment. What is your reason?—For the reason that we have always, under advice, stuck to the Transvaal Government, and said the Oppenheims were nothing to do with us. We have been doing nothing else. So far from our having taken no steps we have been doing nothing else ever since—every day.

3657. You neglected no steps to enforce the obligation of the Transvaal Government?—To enforce the obligations on the Transvaal Government.

3658. But did you take any proceedings—you have given me the reason why you did not have recourse against the Barons Oppenheim, and I daresay it is an adequate one—but this dividend, having been repudiated on the guarantee of the Transvaal Government in July, 1895, why did you take no steps against them until 1897?—Against the Transvaal Government?

3659. Yes?—Because the thing hung on with constant negotiations, and so on, but they did not make any accusation at all against the company till 1896.

3660. No, not till 1897; but where was there any qualification, or anything approaching qualification, of the position taken up by Mr. Smit, the Railway Commissioner, in 1895, that he would not pay this at any price?—Pending investigation.

3661. Can you point out any document in which that position taken up by him was in any sense qualified?—I shall be happy to produce all the details and documents of the negotiations which took place between the Oppenheim lawyers and the Government lawyers at the beginning of 1896, which went on for four months; and when they came to an arrangement, subject to the approval of the shareholders, that approval was not given. There was a second negotiation between the Government and the company at the end of 1896.

3662. Were any steps to enforce this right against the Transvaal Government taken in their Courts until after the Transvaal Government had itself sued for the cancellation of the concession?—No.

3663. It was not until the counterclaim in that action in 1897 that any effort was made to sue them?—We had not any money, or very little, for one thing. You remember they cut off supplies; and another thing was that we were represented by the best lawyers we could find, and everything was done under advice. Possibly the company may have made mistakes. That, I daresay, but as to saying that our body consciously or unconsciously did not take any steps they ought to have taken, I deny it entirely; or that the Oppenheims, from the very day of the row, have ever been protected. On the contrary, every step was taken.

3664. That is not the object of my question, and perhaps it is only right I should tell you the object. Here is the guarantee by the Transvaal Government definitely repudiated in July, 1895?—Excuse me, sir, it is not. It was said to be "pending investigation."

3665. I daresay you are right, but I will look at the letter?—We claimed arbitration as soon as they put in that letter. We have done nothing but fight, as far as we could with our limited means.

3666. "To inform you that I have advised my Government to pay no interest on the share capital of your company pending this question and investigation, and subject to the result thereof"?—They did nothing then till August, 1896, except that they stopped supplies.

3667. And you did nothing except protest until 1897, when they sued you, on the ground of the Oppenheim fraud, for cancellation?—They wrote and said they were going to do it, and then, even then, did not do it for a year.

3668. With the exception of that counterclaim in that action which they brought against you for cancellation of the concession, on the ground of the frauds of the Oppenheims, the shareholders have taken no steps to enforce their rights?—We have taken every step, when we had an opportunity, and, as soon as Van Blokland died, we opposed the appointment of a new trustee.

3669. I mean any legal step. You had the Transvaal Courts open to you?—We have taken every legal step that has been advised by our lawyers.

3670. I am not saying that you are right or wrong; I am not blaming you at all in the matter, but you must appreciate the state of things. The English Government are asked to honour an obligation repudiated by its predecessors nearly six years ago, and as to which no step is taken by those who wish it fulfilled for two years?—We have never slept at all. We did not bring an action, it is perfectly true, against the Transvaal Government in Pretoria; but one reason was that we had very little money; and we have had great difficulty with regard to money, because all this fighting that has been going on for four years has taken a great deal of money. We made Baron Oppenheim find some, and we borrowed some more money, but the whole object of the Transvaal Government was to try and starve us out. They stopped the money. They were not right in stopping the money. They never allowed us a halfpenny, although there was £350,000 there; and although the agreement between us, made in 1894, was that it should be for construction, and for the use of the company. They did not give us money after all these times you are talking of; up to the very beginning of the year 1895 the Minister signed cheques and gave us money, and there was nothing whatever to say there was any trouble. Then we had no money, and could not do very much, but when we were attacked we defended ourselves.

3671. You put the case of the shareholders, as Chairman, thus: that they were the holders of specific obligations of the late Government; and that they had lawfully acquired them by purchase in the market; and that though those obligations were repudiated, or, to use a neutral term, not honoured for six years, that they did everything which their means permitted them to do to enforce it?—Absolutely. We have had three sets of lawyers, and I have given up half my time to it ever since. We have done absolutely everything.

3672. I want you to give me all the facts you can about this?—I am most anxious to.

3673. Do you say that you can establish by documents and evidence that you never sat down under this repudiation?—Never for one single moment!

3674. You had better address yourself to that. It it important for you to do so, and you shall have every opportunity?—Yes; I can satisfy you on that point—never! I do not know whether you seized the point just now that we were in very great difficulty, and we had no documents or information. We were attacked by the Transvaal Government; our supplies were stopped; and we had to get the documents from somebody. Our papers were seized. Supposing we had, as you suggest, have gone for the Oppenheims? What would have been the result of that? We should have been absolutely done out of the whole thing; because I do not suppose you would ask me to say it was safe to trust to the honour or to the fairness of dealing, or anything else, of the Transvaal Government.

3675. I do not give any opinion about that?—I give you that as our reason.

3676. I quite appreciate the difficulty of impeaching the Oppenheims' position, when, apparently, according to the judgment of some of your lawyers, your title might have been held infirm, by reason of their infirmity?—That is exactly it.

3677. I do not say you are right, but I understand the position very well. When did you buy your shares in the undertaking?—About the end of October, 1894.

3678. How many did you buy?—We all bought them together—595.

3679. You bought them at what price?—£15 16s.

3680. How much does that work out at?—£9,408.

3681. These were issued in this prospectus at £18?—Yes.

3682. Did the vendors receive £18 for each share?—No, £16 8s.

3683. Where did the balance go?—In expenses and commission.

3684. What did the Mercantile Trust get?—£1,000.

3685. Who underwrote them?—40 of the best houses.

3686. What commission did they get?—2½ per cent. or 3½ per cent.; I should not like to say without referring.

3687. How much does the rebate for expenses come to—perhaps you can give us that figure afterwards?—Yes.

3688. What did you receive for your expenditure of £9,408?—They were all put in at £16 8s.

3689. What was the gross difference?—It was about £260. I applied myself for 50, and I am sorry to say that I put my near relations and everybody into it. We went in for many more shares than I put in; and I should wish to say also this, that there were £200,000 odd applied for out of the £300,000, and Oppenheims at once subscribed and paid for the balance out of those they put in, so that although they may have put in 7,000, the English shareholders have got 5,000 at this moment. They are certificates, not shares. In other words, to settle up with all the English holders only £200,000 will be required instead of £300,000, assuming you leave out the Oppenheims.

3690. I do not quite follow. £200,000 out of the £300,000 was subscribed for, and that would leave £100,000 untaken up. They belong then to the Mercantile Trust as trustee for the owners?—They were "bearer" shares.

3691. In fact, I mean—looking at the substance of it: the substance of the thing is what I say?—Yes.

3692. Therefore they were left with their shares; there was no question of their subscribing for them?—No; but Oppenheims, instead of taking the money, we took whatever it was—£16 8s. on their shares—sold their 7,000 odd shares. As a matter of fact, they only received cash for 2,500.

3693. Why was that?—Because they subscribed with the £100,000. They had to pay £100,000 for these certificates. The public at this moment hold two-thirds and the Oppenheims hold one-third, and when the row came the first thing I did was to suggest that these certificates should be held. They had not been signed and delivered, and we have stuck to them ever since; therefore Oppenheims have left them with us.

3694. What reason do you suggest for his not taking the cash to which he was entitled under this?—Because he was perfectly willing to subscribe for them. He did not, at any rate, anticipate all these things which you now anticipate, and certainly I nor anybody else connected with the thing did not, because we knew nothing at all. He knew a great deal more than we did. He knew of all this correspondence afterwards with Smit, but we never knew a single word of it. The first I saw was in July, 1897.

3695. Anything you like to say upon it, by all means say. I do not want to hurry you a bit, but at present we are on another thing. How much do you say is left?—4,900 share certificates of £18, and that is what they paid for them instead of the money going to them. They practically took very little in cash out of the sale. They let everybody else take the money.

3696. Oppenheim has remained the owner of those, or, rather, the company has them?—He has agreed. There was no legal title to those things, and now we might raise an action to say they were ours, but Oppenheim said he wanted the English shareholders who paid the money to come out all right, and he has agreed he will not claim these shares until the English holders are satisfied in full; and we have stuck to them, and that has been done with the knowledge and consent of the Certificate Holders Committee, and we have been partially depending on them, the Oppenheims, for means of defending ourselves against a Government who do not spare any means to try to knock us out.

3697. (*Chairman.*) There is one further question. Was any dividend paid after the first dividend?—No, there was none due at the time of the sale, and there was not one due till the 14th July, 1894. The dividend by the statutes was paid on the 14th July up to the preceding 31st December. Therefore there had been no chance of paying it, and there was no anticipation by anybody that I know of that there would be any question about the dividend up to the 31st December, 1894, which was not due till July, 1895.

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3698. It was not paid then?—No, Mr. Smit's telegram was an excuse for that. I want to make myself quite clear about one thing that I do not think I clearly explained, and that is that when I said Baron Oppenheim did not try to walk off, if he had been, as you perhaps might not unnaturally think, anxious to clear out and walk off, he would have taken the £100,000 and not the certificates; but I think—to his credit be it said—that instead of walking off with the £100,000 he took £100,000 of certificates. It was all under-written, and it was quite voluntary on his part. If it was unloading, as you seem to think, he might have done that; but he used the money instead to buy the certificates, and those are the certificates we have got.

3699. I have followed that?—After all I wish to be perfectly fair to him.

(*Chairman.*) Everything is referred to in the papers.

3700. (*Mr. Ashmore.*) That is to say, that that £100,000 had been under-written?—The £100,000 had been under-written. The strict letter of the law would be that the underwriters would pay, and he would have had the money, or he could have taken the certificates and not had the £100,000.

3701. (*Chairman.*) Your point is that if they thought the matter to be as precarious as the circumstances warranted, he would have gone off with the spoil?—Yes, that is it.

(*Chairman.*) I quite follow that point.

3702. (*Mr. Loveday.*) Do you know the exact date on which the works were stopped?—No, I do not. The engineer, Mr. Van den Brock, published a brochure in 1897, which no doubt you have seen, which was my first information about all these things, but that brochure would tell us. I have not got it with me.

3703. When did you first become a director of the company?—I became a director when the English people bought the shares; but you must remember that this was a Belgian company, and I was in England for one thing. The next thing is that the president of a foreign company is the man who carries on and does everything between the board meetings, and then he explains what has happened; and before I had ever taken up my position in any sort of way there came this Smit letter and the trouble, and then we here in England took charge. I gradually got more and more control, until in 1896 we changed the solicitors and the directors and took entire charge.

3704. But, as a matter of fact, you afterwards discovered that the works were stopped in 1894?—I do not think they were actually. From the correspondence which has come to me much later, I think there was a great deal of fret on one side and negotiations, but, as a matter of fact, they were not stopped.

3705. No, they were not stopped, because there was a report made to the Raad by the Railway Commissioner over the period of 1894. In 1895, at any rate, the works had been stopped?—Yes, but I think the contractor went on till August, 1895, finishing the uncompleted sections.

3706. You were not aware of the stopping of the work when you issued the shares in 1895?—Absolutely not. As far as we were concerned, I took the thing as a whole, and I had been in communication with Van Blokland about the debentures from the very beginning, and he was the only man we dealt with. I have brought with me a correspondence to read to you, which took place with him for the purpose of showing how careful and fussy he was, and that he referred everything to Pretoria before giving any authority, and every single certificate he gave he got a special authorisation for from the Pretoria authorities. That was one of the points I was going into, to show that the Volksraad and the Commissioners of Trade were consulted from time to time by the Government from the first, and I can show you that point plainly.

3707. You had a local directorate in Pretoria?—A local committee; but they had no power absolutely.

3708. I presume they reported to you every month?—Not to me.

3709. Not to the company?—Oh, yes, to the company in Paris.

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3710. But were not you made acquainted with the letters that were received from them?—Never. I never saw anything till the row came. I never took over charge.

3711. You said you only heard of the criminal proceedings in 1897, as against the Oppenheims?—In 1896—the particulars of them. Of course, I knew the books of the company had been seized and that the complaint had been made against *x*; that is to say, in Belgium they begin in that way always, so our lawyer explains to me. They begin by making a complaint against anybody and leave the name blank, and then, when they have more facts, they seize papers all round and then they name the people.

3712. Then it did not come to your notice that in the session of the Raad of 1895, Mr. Smit said criminal proceedings had been instituted against the directors of the company?—I do not think so, not till those reports came to me. It would be the very end. Besides, I venture to say—and that is one of my points I venture to make—that Mr. Smit habitually in dealing with these things, knew more than he ventured to say, and he habitually misled the Raad and the Commission.

3713. This was the statement made in the Raad in 1895, that criminal proceedings had been instituted against the directors of the Selati Company?—That is not true, and I am depending for my information on our lawyers in Brussels. The company never have associated themselves in any way with any proceedings, and we only know it by hearsay.

3714. (*Chairman.*) Is there anything you wish to add to your evidence?—There is just one thing I wish to add to my evidence given this morning, and which I wish to be on the notes, and I wish you to take it for whatever you consider it worth, and that is when you put to me that I knew that all these shares were being sold by the Oppenheims only, I did not know, but I understood you to ask me if I knew Oppenheims had been the holders. Of course they held nearly every share in the company at the formation, but my shares I understood I bought from the Transvaal. I had not the slightest knowledge at the time of this sale in London that those shares were only the Oppenheims' group—not the slightest. I knew they were shares in the Transvaal, but I wish to correct my statement, and if I had understood you rightly I would have said so before, but at the time of the sale anybody could see that nearly all the shares were at the time of the formation originally held by the Oppenheims. Those bearer shares are just like five pound notes. I did not know on whose behalf they were sold the least in the world.

3715. (*Mr. Ashmore.*) Can you give us any idea before this trust was formed and these certificates issued the price the shares sold in the market?—No, there was not any price, and there was no quotation, and no possibility of a quotation. I think you know the Stock Exchange will not give a quotation for any shares that are numbered 1 and then 10 and then 50.

3716. (*Chairman.*) I know the fact, but what is the reason?—I think it is that they may control it because in most matters there are vendor's shares and other shares which are not entitled to be quoted for a year after the issue. Of course, I take it that you will hear me again upon this. I have a great deal to say to you about the negotiations with the Government—a good many things to say.

3717. Do you mind saying what you have to say now?—With regard to the documents you ask me for and the details as to why we did not take proceedings I shall have to go into a little detail, because we have been doing nothing else but consulting with lawyers ever since the thing began. I have written almost every week to the Transvaal and our lawyers there, and we have been fighting in London and Brussels.

3718. I daresay it did not occur to either you or your advisers before, but that is a branch of the thing that may go over. Is there any other matter that you wish to add?—A great part of your examination this morning was taken up with regard to me personally. I know perfectly well that when you are in with people who conceal things from everybody, that you obviously must be prepared to explain it; but I am more or less anxious to put before you the case of the shareholders. They have a case. I mean to allege that the Volksraad and the Commissioners of the Volksraad, and those out there were absolutely always from the very beginning deceived, and I hope to analyse with you the first report of the Volksraad Commission showing that whatever the Oppenheims may have done the Transvaal Government were a great deal worse, and they habitually concealed things from the Raad.

3719-20. I am afraid that I interrupted you this morning because I thought it was the quickest way to raise the points, and that is the procedure we have generally adopted, namely to examine the witness first, and anything he wishes to add afterwards he is at liberty to add, and if you are prepared with any other observations with regard to this case which I understand you to be fully master of, perhaps you would dispose of the time, and you shall not be prejudiced hereafter in adding anything you may think desirable?—What I wish to go into with you is to show you two instances. Of course this case is too big, as it has been going on over ten years, and it is very difficult if something is suddenly put to you about what happened five or six years ago to remember the exact facts. I have brought here a consecutive story of the negotiations with regard to the first lot of debentures. Why I did that was that in the Volksraad Commission of 1894 questions were raised and certain members seemed dissatisfied about the first issue, as if there had been some mistake about it. That was one of the things that I will show you the Government were absolutely deceiving the Raad about. They had got the whole thing chapter and verse.

3721. I see no reason why you should not go on with that?—You have the papers before you. My difficulty is from the wealth of material to put it in any reasonable shape, because these things have been going on for so many years, and we have an enormous accumulation of documents. I have taken two special instances which show very clearly I think so far as anything we at any rate have to do with that the people out there were hocussed and that this question of the debentures is absolutely straight and above board, and the Government or Mr. Smit had not any ground for saying it was not.

3722. Subject to anything you have to say upon it, I do not at present see why you need in any way concern yourself with the debentures. I do not see that it has anything to do with you. Mr. Macrae put his case on the debentures?—As a company we are responsible.

3723. He explained why he did not think the company was in any sense satisfactory, and that he took particular care to make that absolutely clear upon the debenture bond, and if Mr. Macrae fails to satisfy us upon that—I do not say he has failed to satisfy us at all—what have you to do with the debentures. I do not see that you have anything to do with them at all?—As regards the Transvaal, the company was responsible for everything, and a great deal of prejudice has been created in your minds by what has been said in the Volksraad, and all that sort of thing, and I want to show you we never had anything to do with the Volksraad, and the company were not bound to consult with them, and in the next place what the Volksraad did was incorrect. I quite admit, as you say, Mr. Macrae has spoken about the debentures, and it is not for me to discuss with him as to whether or not at the time he did not consider—it is very easy now in the cloud of prejudice which has been created for people honestly (as I am sure my friend Mr. Macrae would) to give colour to their last feelings by what they have last heard, but as a matter of fact, the Railway Share Trust made large advances to the contractors from the very beginning, and they invariably took as collateral security Baron Oppenheim's guarantee and Baron Oppenheim's shares for years. Of course, it is all very well to say now when the thing has come to a difficulty this, that, and the other, but the facts remain.

3724. I do not quite see the relevancy of the debenture issue to your case. I can understand incidentally it may show that certain other people thought this and that of the thing, but I do not quite see at present what it has to do with you. You are representing the shareholders?—I am.

3725. Most of these shareholders that you represent now are English shareholders; that is to say, most of them are shareholders who purchased under that prospectus, are not they?—Yes, but one of the difficulties of my position (within the knowledge of the English shareholders' committee) is with regard to the people other than the d'Adhèmars, and the people who held shares for nothing—people like the Belgian Bank who are more or less holders for value if we have to make a definite distinction—I have never been able to make a definite distinction—between holders for value in Belgium and holders for value in England. Therefore, to a certain extent, I am bound to represent the company.

3726. There is a distinction which you plainly appreciate between the original allottees of these shares and

those who bought them for value in the market. I do not know whether you have anything to do with the original allottees?—Absolutely nothing, and never had.

3727. You have only to do with the case of certain people who bought these shares in the market and paid for them. I understand that is your position?—Of course, one of our difficulties was that if the Belgians and the people who hold as they say for value thought that I was simply going to leave them in the lurch, and only think of the English people; as Chairman of the company I am bound to put before you the case of the shareholders who are holders for value. I limit it entirely to that.

3728. You have at present nothing to do with the Oppenheims?—Absolutely nothing.

3729. Except so far as you are personally concerned with regard to that prospectus?—I do not wish to go further into that, because you are always in a mess with people if things happen after, but I wish to put before you the case of the holders for value. I happen to know that one of the things that was objected to against the company was with regard to the first issue of debentures, and I have merely taken these letters which show absolutely clearly as regards that which was one of the grievances against the company mentioned in the report of 1894, it has absolutely no foundation. Secondarily, these letters show, and I wish to repeat it every time, that we in 1894 who had to do with anybody who helped in the preparation of the prospectus or anything else, had to deal merely with accomplished facts, and we say we can prove absolutely from the hand of the Government that particular question has nothing in it at all. This that I am going to bring before you goes to show that Van Blokland with whom we dealt knew about it thoroughly. I admit that if Van Blokland can be thrown over by the Transvaal Government or by the English Government—his acts or anything else—we are in a bad way, but I say that cannot be done, and I only wish to read these letters as showing how careful Van Blokland was that before he did anything whatever he always referred to Pretoria, and took the greatest precautions to the point of fussiness.

3730. What is the point you think you establish by reading those letters?—One is about the debentures, to show that so far from the company or anybody having done anything wrong about the issue of the first debentures, that there was a discussion about it in the Volksraad, and it was absolutely above board. Secondly, I will show you how careful Van Blokland was in that and other matters.

3731. I do not see what you have to do with the question of the rate of 70 or 77 or the Volksraad?—But it was the company who got the issue.

3752. No, the debentures were issued, and the underwriters got 5 per cent. What has that to do with the company?—The company was interested with the directors in all the negotiations for it. They are liable first. It struck me the other day you were not satisfied with regard to the question of the 70 and the 77, and you seem to think there was some question about it.

3733. Nobody gives us any information here, but we have to ask questions which may look like hostile questions, but they are questions we are obliged to ask, because nobody gives us information unless we ask for it. You can deal with the question of the 70 and the 77 if you think it is material, but be somewhat merciful as to length, because it is rather a subsidiary point?—My second point, perhaps, is shorter.

3734. First you say the issue of the debentures was regular and authorised by Van Blokland?—And, of course, the Government. Then, secondly, about the approval of the company's share certificate. Van Blokland not only approved, but he drew it up; he altered it, and it was, in fact, his document.

(*Mr. Ashmore.*) That is established, I think, by the papers we have here.

3735. (*Chairman.*) I thought the facts established it, and that is why I say it is not necessary to go into it again—both the first and the second propositions?—It shows only the course of business which I want to impress upon you very much. The Transvaal Government are trying to throw over Van Blokland.

3736. You say these are evidence that Van Blokland was the Government, and so acted?—Yes. The letters begin on the 12th July, 1892, and the first is from Van Blokland to the company:—"The Hague, 12th July, 1892. Gentlemen,—The Government asks me my opinion upon an issue of obligations that you wish to make. In order to be able to form an opinion, I beg you to be good enough to communicate to me in detail the propositions that you have made upon this subject, and to add to it anything that you may consider useful in order to enlighten me. I am, etc., Beelaerts Van Blokland." Then this is the answer of H. Warnant, the conseil of the company—there were three parties interested in these debentures, that is to say, the company, the contractor and the Debenture Committee, and M. H. Warnant was negotiating with the minister:—"Hotel Paulez, The Hague, 28th July, 1892. To His Excellency the Minister Beelaerts Van Blokland, Minister Plenipotentiary and Envoy Extraordinary, The Hague. Sir,—In my quality of Conseil of the Compagnie Franco-Belge du Chemin de fer du Nord de la Republique Sud-African"—I will call it the Selati Railway—"I have the honour to hand to your Excellency enclosed: (1) Copy of the translation in French of the concession of the Selati Railway. (2) Copy of the questions which the said Franco-Belgian Company sent some time ago to the Government at Pretoria. (3) Copy translation of the letter from His Excellency Dr. Leyds, dated 14th May, 1892. (4) Copy of the form that the Franco-Belgian Company proposes to give to the debentures. The only important point remaining to be settled is the rate at which the Government of the South African Republic will give to the company each of the series of £300,000 debentures." The Volksraad authorised in May, 1892, that the concession should be altered as far as the amounts and times at which the debentures should be issued. "I have the honour to confirm to your Excellency the proposal that the company had made to you to receive the first series of £300,000 at 70 per cent., with a difference of two points for expenses, which will mean that the company would receive the debentures at 68 per cent., it being understood that the issue should be made made at a rate not below 70 per cent. The success of this first issue will facilitate in the future the rate of the subsequent issues, and this to the advantage of the South African Republic. I am, &c., H. Warnant." Then Beelaerts van Blokland to Henri Warnant: "Oosterbeck, near Arnheim, 31st July, 1892. Monsieur le Conseil,—I have the honour to acknowledge receipt of your letter of 28th inst., as well as the documents that you mention therein. As you say, the principal question to be settled at this moment is the rate to be fixed for the issue of the debentures according to Article 25 of the Concession. Upon this subject, I have just put myself in communication with financial men at Amsterdam, as to the feeling of the market. They reply: (1) that as late as the 29th, 4 per cent. Debentures of the Netherlands Transvaal Company were sold in lots of 10,000 florins at a price of 87½. (2) That an issue at the rate of 82 was considered to have at the moment on that market every chance of success, provided that it was made by a house of the first class. This differs so considerably from a rate of issue at 70, even if one deducts several points for the expenses, &c., that I should not dare to take upon myself to express a decisive opinion. If the company thinks fit to persist in the figure of 70, or even 68, I will refer to the Government, at the same time adding the opinion of Amsterdam. If the company thinks fit to accept 82 as the rate of issue, I would advise the Government to approve, and to allow 4 or 5 points for expenses and profits of the Syndicate. I am anxious, sir, to give you this expression of opinion with all frankness, and I will wait the decision of the company before writing to the Government. The form of debenture that you have been good enough to submit to me gives rise to only two observations—(1) that I should desire to mention therein that in case the Government used its right of taking over the railway, and the company should proceed to liquidate according to Article 34 of the Concession, the loan could be paid off either by repayment of capital, or by periodical purchase of bonds, at the choice of the Government. (2) Instead of the final words 'as Special Commissioner and Agent of the South African Republic,' I should prefer it to be 'as Special Commissioner of the Government of the South South African Republic.' In terminating, I beg to add that, for the success at Amsterdam it is of the last importance that the issue should be made by a house considered to be absolutely of the first class. There have been Belgian issues which perhaps have been less fortunate in this respect. Has a final choice already been made: if so, what? I think also that it would be useful to consult the house that is chosen upon the form of the debentures before fixing the form irrevocably. I am, etc., Beelaerts van Blokland." Now, sir, this is an important letter, at any rate so far as *bona fides*:—"Brussels, August 2nd, 1892. To His Excellency M.

Mr. E. Evan-Thomas.

13 Dec. 1900.

Mr. E. Evan-Thomas.

13 Dec. 1900.

Beelaerts van Blokland, Minister Plenipotentiary and Envoy Extraordinary of the South African Republic, Oosterbeck, near Arnheim. Sir,—I have the honour to acknowledge your letter of the 31st July, 1892. I have not yet summoned the Board of Directors of the Franco-Belgian Railway Company, for, as you will allow, the difference between the rate that you propose and that counted on by the company is so great that it will not be easy to arrive at an arrangement. Would you allow me to indicate to you several reasons for which, personally, I find very exaggerated the rate of 82, which you indicate as being that of the issue of 4 per cent. debentures of our new company. The reason that you give as being the basis of your opinion is that, as late as 29th July, 4 per cent. bonds of the Netherland Transvaal Company were sold on the Bourse at Amsterdam at 87½ for amounts of 10,000 florins. As I had the honour of observing to you at our last interview, there is no comparison between the price at which certain persons wishing to make safe investments, buy, for sums relatively small, debentures of a company in full work, and the rate at which the debentures of a new company could be issued at one time at one or more markets for important sums. If your reasoning were followed, one would ask at what rate the South African Republic ought to have authorised the last 5 per cent. Rothschild loan"—which was issued in the summer of 1892—"87½ for 4 per cent. would give 109·35 for 5 per cent. Nevertheless the issue of 5 per cent. was issued to the public by Rothschilds at 90. This gives 72 for 4 per cent., and it is not to be doubted that the Rothschilds made a loan without securing to themselves a considerable profit. Do you not think, sir, that it really is the rate of this recent issue which must be considered rather than the prices of stocks already on the market a long time. To-day, in spite of the enormous influence of Rothschilds, who always keep up the prices and the premium, there may be at any given moment the 5 per cent. new loan, far from being at 109½, is at 94, and no one dreams of finding this price too low. You tell me, sir, that you give me your opinion after having consulted financial men at Amsterdam. We shall find, perhaps, by their means the solution of the question. This question would become very easy if through them, personally, or through Amsterdam banks recommended to us by them at Amsterdam, the issue could be taken firm at the rates you indicate. I can assure you that the Franco-Belgian Company does not ask better than to arrive thus at a possible arrangement and a favourable solution. I am, sir, at your entire disposal to go either to The Hague or to Oosterbeck to examine these different points, and I should be grateful if you would summon me for any day and any hour that may suit you. As to the two modifications of form which you indicate, I approve them absolutely, and your observations shall be taken account of." Now this is the answer on the 9th August, 1892, from Beelaerts van Blokland: "Monsieur le Conseil,—After having examined your letters of the 2nd and 4th of this month, I have again put myself in communication with the financiers at Amsterdam. Having asked them if they were inclined to form a syndicate on the basis of an issue at 82 per cent., they have replied to me in the negative. They alleged, not that this price was too high, but the following reasons: In the first place, this precise moment would not be favourable. In the second place, there are still engagements for the Netherland Transvaal Company which do not finish till towards the end of this year. As long as these engagements last the bankers would not like to patronise a new Transvaal issue of any kind. This does not bring the solution of the question which occupies us. You will well understand, sir, that I am obliged to guard against an issue made, so to speak, at any price at an unfavourable moment, for the result would be too heavy a load for the Republic. I do not know if, even at the price of 70, a syndicate could be found to take firm all the issue. Can you prove it to me? In any case, means must be found to counterbalance a little in favour of the Government a low price, which would weigh down too heavily the future. Perhaps it would be preferable not to make the issue at Amsterdam; if this is so, I should desire to approve in the name of the Government the banking house which would be entrusted with it. In presenting to you these observations, I beg you, M. le Conseil, to accept, etc." Then there is a telegram from the Company to Beelaerts van Blokland of the 18th August, 1892: "Board of Directors assembled ratify correspondence exchanged. We should be glad to confirm definitely the company without renewing the delay, expiring the 22nd, for this agreement as to the issue indispensable"—that refers to something in their own affairs—that the company was provisionally formed in February, 1892, and then pending the result of some questions they addressed to the Transvaal Government, that is, they could, by Belgian law, put off the definite forming of the company till September, and it was finally formed in September, 1892. Then the telegram goes on: "At the rate proposed of 73 less 4 points, a company would take firm the whole issue. This would be done by first-class house outside of Holland." Now we come to a telegram approving the rate. There is no date to the telegram, but you will see from Mr. Blokland's letter what the date was—it was the 23rd August, 1892: "Government approves issue at the rate of 70 minimum net for the amount of half a million on condition that the issue shall take place within six months and the complete paying of the capital." Then he writes a letter confirming it. Then there is a letter from M. Warnant to Van Blokland, in which M. Warnant says very naturally that if they were going to make two bites at it, they had better make a larger loan and call it up at longer intervals. Then he asks to be allowed to call on Van Blokland on a certain day. Then the next letter is rather important, as showing they had been consulting the Government again about the rate, because Van Blokland says: "As to the amount of the issue I am not authorised to go beyond £500,000, which in any event seems a pretty good sum for a syndicate. It is precisely on account of the price of 70, which the Government considers low, that it is not willing to engage itself for the future, neither directly nor indirectly. We shall have the advantage of talking as to this. Perhaps you will bring with you a draft contract to be concluded between the company and the syndicate." I rather think that I went also to that meeting at Arnheim, because, although Van Blokland knows English perfectly, he will only talk and write in French, with English people anyhow, and as I know French, I was rather the man put forward by the debenture syndicate. The next letter, of the 27th August, there is nothing of importance in, and then there is the letter of the 1st October from H. Warnant pressing for a larger sum: "In accordance with the authorisation that you were good enough to give me when I had the honour of seeing you at Arnheim, I take the liberty of again setting out the reasons which make me anxious to obtain from the Government of the South African Republic that they should authorise now the issue at the price of 70 not only the £500,000, but the £1,500,000 provided in the 3rd paragraph of Article 25 of the Concession. As I had the honour of telling you in my letter of 25th August, the interest of the company is to obtain this issue for £1,500,000 as to-day the company is in the presence of a powerful syndicate who are willing to take firm these debentures at the price mentioned. In addition, it is not doubtful that the interest of the South African Republic is identical with that of the company. The Government, in according the issue asked for, will in the first place avoid upon these £1,500,000 all loss resulting from the future condition of the European markets; in addition, in thus acting, the Government will place its credit on a securer basis, because it will allow of the debentures standing at a higher price. On the other hand, if the public knows, and it will know, that there are to be successive issues at short intervals, it will be afraid of subscribing to the first issue or issues because it will be doubtful whether the future issues will not diminish the value of the market price. According to my idea, the result of the method by which issues, both frequent and for relatively small sums, will be to prevent the Transvaal securities from acquiring the value that they merit. It is certain that the normal rise due to a State security of this value will be absolutely stopped during the whole course of the construction of the railway. The State has considerable interest in seeing debentures guaranteed by it acquire a high price, and this in the interest of any future operations it may have to undertake. I do not see at present what prevents the matter being carried through in the way I have the honour of proposing to your Excellency. Everything militates in favour of the theory that I advocate, and I do not see anything in favour of the contrary." Then Van Blokland replies: "It seems to me that the proposition contained in yours of the 1st of this month must be considered as a proposal from the board of directors, of the company, and submitted as such to the appreciation of the Government. But before I can communicate it to the Government I beg you to be good enough to communicate to me (1) the names and firms of all the members of the syndi-

cate; (2) the draft contract that the company desires to conclude with the syndicate.—I am, etc., Beelaerts van Blokland." Then there is a stay till the 14th November, and the reason of that was that the Netherlands Railway was making an issue in Amsterdam of the engagements that Van Blokland mentioned in his first letter, and naturally the Government was not going to interfere with the senior railway by doing anything further with this. Then this is a little important in showing you that I am justified in saying that we had nothing practically to do with Pretoria unless Van Blokland sent us there: "The Hague, 14th November, 1892.—M. le Conseil,—In reply to your favour, I regret infinitely to have to tell you that I do not see any means of pressing my Government for a telegraphic reply to the question you mention. Perhaps the company will consider it advisable to communicate by telegraph with its agent at Pretoria. It is with much interest that I learned of the arrival of the engineers." Then he says: "P.S.—On a favourable opportunity you will be so good (1) to send me three copies of the regulations for the meetings of the board of directors; (2) to indicate to me your views as to the manner of applying the last two paragraphs of Article 26 of the concession in the case of an issue of debentures." Then there is a letter from H. Warnant, of the 30th November, 1892, in which he says that the local committee at Pretoria have been told, but only after Van Blokland had said, "Do so." Then he speaks of the regulations which show it was van Blokland's duty to attend every board meeting of the company. He receives the information as to the date, time, and place of the meetings. Then M. Warnant goes on to describe his views. Then on the 16th December, 1892, there is a letter to the Minister, Van Blokland:—"Brussels, 16th December, 1892.—Sir, —Mr. Macrae, president of the Debenture Committee. Mr. E. Thomas, director of this committee, and myself, desire very much to confer with your Excellency with reference to certain questions of detail concerning the issue of the first series of debentures of the company." The six months was getting on. The authorisation was to expire upon the 22nd February, and we came to the conclusion that we would not wait any longer, whether they were going to put it at a bigger sum or a lesser sum, but we would issue the 500,000 authorised. Then on the 19th January there came a telegram. Curiously enough, the local board had been working away at the Government about the additional money all the time, and on the 19th January they received a cable which I have already put in—it is in the correspondence with Mr. Macrae. The Minister says 500,000, offered at 77. Then that crossed. Then meanwhile we had gone on with the 500,000 at 70. On the 30th January there is a letter from H. Warnant, which is not important except it mentions the question of the prospectus, and there is a very important postscript:—"I was going to send to your Excellency, as agreed, the contract exchanged between the company and the trustees, when I see that Mr. Macrae has done it to-day." That was the trust deed which gave notice of the cession, and all the rest of it, from Warnant to Westwood and Winby and its acceptance by the Company. I have added these letters, because if I had stopped there it would have looked as if there was some point unsettled, and Mr. Macrae sends the prospectuses, and the Minister sends them back with a few alterations, and then there is a letter from Mr. Macrae explaining it was too late, and, as a matter of fact, the prospectus was issued. Therefore, as regards that first issue (everything is suspected of a company in our position), as far as the company could go, there was the way of doing business with Van Blokland, which up to the middle of 1895, until Mr. Smith arrived, was always followed. I could call the secretary if necessary, but always before writing letters to the Minister about anything important he used to go and see him first—he used to see him three or four times a month—and then when he came back he wrote in the letter, saying so and so. The letter of the 4th of August you have not seen before, but that we went into this morning. Now, sir, if you will allow me to put before you the letters that passed about this time. They are with regard to the early matters of the company, with which I have had nothing to do, but they are all part of our case, because we have to adopt everything we can that the old company did that will serve our point. There are three or four letters with regard to the approval of the share certificates.

3737. This is on the same point—that is to say, that Van Blokland in the ordinary course of business was the representative with whom you communicated, or with whom only you communicated?—With whom we always communicated, and the Government always communicated to us through him. *Mr. E. Evan-Thomas.* 13 Dec. 1900.

3738. What are you going to read the letter for?—To show that he really went beyond this. Van Blokland in this case took upon himself really to draw up the certificate or to correct it to such an extent, and had it sent to him many times, and I can show you most plainly that that share certificate, as approved by Van Blokland, is practically the most important thing that we shareholders for value have got, and particularly I (if you will put it in that way), who was concerned in selling those shares.

3739. (*Mr. Loveday.*) Is it not a reprint of the Netherlands share certificate?—Oh, no. I have not the first one, but here we have one altered in his handwriting.

3740. A Netherland certificate?—No, our own. He was always whittling at it. He had four or five prints of it, and he was always changing it and altering it, and then he sent it out to Pretoria. This is the original (*producing*), and here is a photograph of the alterations (*producing*). That was about the fifth proof. He altered it every time, and then he sent it out to Pretoria, as the correspondence shows, and then they sent it back again, approved. That is another brick in our wall. We have here a letter of the 24th August, 1893:—"Oosterbeck.—Monsieur le Conseil,—In reply to your question, I have the honour to remind you that it was only the 22nd June last that I was in a position to transmit to the Government the specimens of share and of debenture of the Franco-Belgian Company, which you were good enough to hand me several days before. The news of the decision of the Government on these specimens can hardly yet be expected. As soon as I receive instructions on this subject I shall hasten to inform you.—I am, etc., Beelaerts van Blokland." Then Van Blokland wrote again on the 15th January, 1894:—"The Hague.—Monsieur le Conseil,—As was arranged in Paris, I have the honour to enclose you the proof of the debentures of the Selati Railway, duly corrected. The proof of the shares has already been handed by me personally to the Baron Eugene Oppenheim, I having, at the same time, observed that perhaps it would be useful after reprinting to submit the first proof to the Consul-General Van Deeth at Brussels, or to his son, in case of any mistakes in the Dutch. The second proof of the shares, as well as of the debentures, will in any case be examined by me. I shall be obliged if you will kindly acknowledge receipt of the enclosed." Then they write to him on the 4th February, 1894:—"I have the honour to enclose you herewith," and so on. Then, "According to your desire a specimen in black and white of the debenture and share. I have only just received the proofs, and I have not yet been able to send them to be corrected by Monsieur Van Deeth, Consul-General of the South African Republic, at Brussels. I propose to do so to-morrow, and I shall have the honour to enclose you a new proof after correction. If nevertheless, your Excellency has at the moment any correction to propose, I should be obliged if you would kindly communicate it to me as soon as possible." Then, on the 12th March, 1894:—"Monsieur le Conseil,—I have the honour to return you, enclosed, the proofs of the debentures and of the shares of the company, duly corrected. The Consul-General Van Deeth would perhaps satisfy himself that the printer carries out properly the corrections which I have now made, and if for the debentures there should be any faults in the printing of the coupon of the 1st July. As to the question put in your letter of the 8th inst., it seems to me the proper word in Dutch would be 'bestuurder,' which you will find already in the same sense in the proof of the shares. If you wish 'administrateurs' in the plural you must put 'bestuurders.' When ready I shall be happy to receive a specimen of the shares and bonds in duplicate.' That is the last, and then he sends them in. These letters I take from the original copies sent to us in substantiation of the position of the company before the sale in 1895 of these shares. All I can say is that we spent weeks in going into all these things, and if you have a moment more I should like to read two letters.

3741. We do not wish to hear it. These letters of August, 1893, you only use for the purpose of showing Van Blokland was the representative. You do not go any further than that, do you?—Except that I put them in as letters that were given to us when we raised the question before the sale of the shares in London in 1895. There were all sorts of questions raised, and we went on for two months, and those copies of letters were

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given us at that time with the proofs of the certificates. There is one certificate which I have not got now, but which is more altered by Van Blokland in his own handwriting than that one I have produced. There was a point on that French translation which I showed you this morning that now lies in front of you—the pink document, which was the only one we had before this sale. When we came to go into the thing for the Share Trustees, there were many articles that it was necessary to examine into, more than for the debentures. Those were all threshed out—about the payment up of capital, and so on, but when we came to the shares there were a great number of articles which concerned the shares, and one of the legal difficulties which we had was with regard to the translation of the word in clause 27 about the interest paid to the company. There is the word intérêt. You notice also (you may take it from me) that in the French translation they use the word intérêt always when they talk of the interest on the debentures, and when they talk of all sorts of interest they use the same word. In the Dutch concession they use a different word, but a point that was raised, and that was a little difficult to get over, on that French translated copy of the concession, was that that merely meant what the Petersburg-Pretoria have really got, that is to say, they were to get 4 per cent. on the capital of £500,000, that is to say, they got £20,000 a year, and whether they lose £100,000 a year is no concern of the Government. If you compare that with article 27, and compare that with what the Government did, namely, one payment of interest for 1893, we are like the Netherlands Railway, that every postage stamp we have is paid for by the Government, and if our earnings do not make up sufficient to give us 4 per cent., the Government makes up the balance. If we lose £100,000 in working, then they have to pay it with interest, which they did for the year 1893 in 1894. I may say the Transvaal Government paid on that basis in 1894. If you look at the certificate on all the coupons, it says, a minimum dividend of 4 per cent. is guaranteed to the company, but we were not content with that. As has been stated here once or twice, Van Blokland gave his certificate, but people connected with the thing said: look here, how can you be sure about that interest? they may pay it this year, but they may turn round and say, we have only to pay so much a year. We had that concession properly translated, and the best thing I could do was to write to some friend in Holland, and ask him the names of the best Dutch lawyers who were to be got. I am giving you these letters to show you the spirit in which we went into this transaction and to which you alluded this morning. He recommended me a certain firm of Loder and Bik, of Rotterdam, who are great people, I believe. This was my letter to them:—"January 29th, 1895. Messrs. Loder en Bik, Rotterdam. Dear Sirs,—Messrs. Ruys and Company have been so obliging as to give me your name in connection with an opinion I require upon the proper meaning of some words in a Dutch document. I am a large shareholder in the Selati Railway. I enclose you a certified copy in Dutch of the concession granted by the South African Republic for the construction of this railway, of which I wish to make as accurate an English translation as possible. I would refer you to articles 25, 27, 29, 30, 32, 36, 37, 38, and 39 of this concession. You will notice that in articles 25, 27, 32, 36, 37 and 38, the word 'rente' is used to describe the sum guaranteed either to the debenture holders or to the company by the South African Republic. The same word 'rente' is used in article 39 to describe the dividends arising from the Reserve Fund. In articles 29 and 30, where the simple payment of interest on a loan is treated of, you will notice that the word 'interest' is used four times, and nowhere else. The point upon which I wish for your opinion is whether the word 'rente' in articles 25, 27, 32, 36, 37, 38, and 39 should be translated into English by the words 'net interest' and in articles 29 and 30, simply as 'interest.' Thanking you in anticipation." Then this is their reply:—"Rotterdam, January 31st, 1895. E. L. Evan-Thomas, Dock House. Billiter Street, London. Dear Sir,—We are in receipt of your letter of the 29th inst., and copy of the concession for the construction of the Selati Railway, which please find enclosed. In reply to your enquiry, we beg to say that the words 'rente' and 'interest' are, in our language, used promiscuously, even in the text of our law. This may be observed to a certain extent from the document itself, by comparing the articles 29 and 30, which mean analogous cases, namely, a capital or fund deposited or put aside for a certain purpose, in the former article the word 'interest' being used, and in the latter 'rente.' We are of opinion that both words may be translated by 'interest' with a few exceptions. Article 27 states that the Government of the South African Republic guarantees to the company a 'rente' of 4 per cent. per annum on the capital paid up. The meaning of this article is more clearly expressed in the second section of article 32, stating that the Government pays the money required for final liquidation of the company, together with a sum equal to 20 times the average dividend drawn by the shareholders over the last three years, and not less than the rente guaranteed to each of the shareholders. In both articles 'rente' appears to be not the proper word in the Dutch text, and should not be translated by 'interest.' 'Rente and interest' in our language mean a fixum, which holders of obligations and debentures are entitled to. Shareholders do not receive a fixum 'rente,' but a dividend, the amount of which is uncertain, and depends upon the prosperity of the company. A shareholder receiving his dividend may, for his private guidance, calculate what interest he is practically drawing from the capital laid out to buy a share, but he cannot be said, as a shareholder, to receive 'rente-interest.' We think, therefore, that 'rente' in the articles 27, 32, 36, 37, and 38 should be translated by 'minimum dividend'"—you notice they translate it to be exactly the same word as the minister, although I was careful not to send them the certificate—"and that in all other articles, interest would be a correct translation, whether the Dutch text contains 'rente' or 'interest.' It is not quite clear to us what you mean by interest and net interest, especially as to the meaning of the latter."

3742. (*Chairman.*) It comes to this— they agree that it is what they call fixum?—They do, but I should like to read the final letter I wrote to them:—"February 1st, 1895. Messrs. Loder and Bik, Rotterdam. Dear Sirs,—I am much obliged for your very explicit letter of the 31st concerning the translation of the word 'rente' in the Selati Railway concession. Your interpretation is absolutely borne out by the share certificate and the statutes of the company, both of which have been approved by the South African Republic. I did not send you these, as it was far more satisfactory to have the words themselves translated and explained by you. I telegraphed you to-day asking you to be so kind as to give me the name of the gentleman you mention who would help me with the translation. After I have gone into the matter with him I may have to apply to you again." Then they sent me a telegram giving me the name. That is all I have brought. I was not aware this morning what line your questions would take, but I have only brought you these instances, which I had chosen beforehand, to show you that, so far from, as it might appear, any want of care taken in protecting English shareholders at all, that we worked at this concession, and the requisitions, and everything else from the Oppenheim's for at least two months before we issued the thing, and in addition they got the certificates.

3743. (*Chairman.*) What was the date of those two last letters?—The 31st of January, 1895.

3744. (*Mr. Ashmore.*) This was the balance-sheet on which the first payment of interest was procured from the Transvaal Government, was it not? (*Handing document to witness.*)—Yes, Mr. Westermann drew that up.

3745. You are not responsible for it in any way?—No.

3746. That is wholly fictitious, is it not?—As Mr. Stevenson and all the advisers of this company say, that comes round to the question again if that was a lump sum contract—no. It is fictitious in the sense that it includes £400,000; but it is not fictitious in any other sense.

3747. I think it is. It purports to charge the company with 12,500,000 francs, which it has received, and 13,500,000 francs, as debentures, as against which there is the 30 per cent.?—Yes, it all depends on that question.

3748. That is merely a book entry?—It depends on that question.

3749. Then works in progress, 15,249,000 francs?—That is the difference between par and the price of the debentures.

3750. I mean that. There are works in progress, 15,249,000 francs, and there is an entry of so much for sundry debtors, which, of course, is stock, and things of that kind?—I think that is all right. On the face of it is this, that *this* is included in *that*, and that

if it is a lump sum contract that is all right. If it is not, then it is wrong.

3751. As a matter of fact, so far from 15,249,000 being for works in progress, 12,500,000 of that were not represented by works at all?—10,000,000 francs.

3752. The formation expenses are included here, and administration expenses are included here—those were all part of the half-million?—Yes, but £10,000 of that were authorised.

3753. I have nothing to say against that; but this 15,249,000 francs so far from being works in progress included really this 12,500,000 francs, less, you say, £100,000?—Yes, 10,000,000 francs is what you may take from me that the whole controversy at Brussels was about, and not about the £500,000. This is fictitious. That is to say, that is an entry if they have not got a lump sum contract, that is fictitious.

3754. Even supposing they had a lump sum contract, it was not works in progress, whatever else it might have been?—Quite—I have nothing to say to that. We have no part, lock, stock, or barrel, with anything of that; but, as to figures, we come round again to this, that the more you go into it the more you find ——

3755. (*Chairman.*) It does look as if the men who drew this up, whether they are right or wrong about the lump sum, were anxious to convey that works were in progress?—You may take it from me absolutely, and I can prove it to you by the secretary of the company, that that balance-sheet was drawn by Mr. Westermann in its present form—Mr. Westermann, the Government expert. There were works in progress.

3756. But not to the amount of 15,000,000 francs?—Oh, no. The 10,000,000 is in here, unquestionably.

3757. With regard to Mr. Westermann, it is the case that the moment his report got to Pretoria, the Pretoria Government protested?—About the Warnant contract, you mean?

3758. Yes?—But, of course, at the right time and place, the Company will maintain most strenuously, as was really the fact, that the opposition to that Warnant contract was at that time withdrawn. They may have revived it afterwards. I make no admission, but while I am on this you asked me something about the Oppenheims, but I say I have nothing to say to the Oppenheims; but I say for the company absolutely, that on the documents, as we knew them at the time, and not as we know them now, that Warnant contract was intended to be, and was, dropped at the time by the Government.

3759. I do not know what Mr. Smit would say to that?—But the Government, as represented by Van Blokland, dropped that.

3760. Westermann examined the books and reported early in 1894?—Yes.

3761. On the 12th of June, 1894, so soon as the Westermann report got into the hands of the Government at Pretoria, they protested against the Warnant contract?—Yes, on the 27th of June, after Smit wrote his letter, they paid the dividends on the shares. I ask you how people who buy shares are to get on if people go on like that?

3762. This pink document purports to be the translation of the Concession by M. Aubert, the French Vice-Consul at Pretoria in 1892?—It was printed then, but I do not know when he translated it.

3763. At all events, it was printed then, and it came into your hands, I suppose, about then?—Yes, it would have come then, I suppose. Presumably, that had been put in when they had to show the first issue of debentures.

3764. The first issue of debentures was made in England, and was made, I suppose, on an English prospectus, and the Concession referred to in the prospectus was deposited, I suppose, in the usual course and referred to?—Yes.

3765. Was that in English?—No, that was in the original Dutch. We have always—when I say always, I mean from the first issue of debentures—had a copy of the Dutch thing put in. This purported to be an official translation.

3766. Were the material documents on the prospectus deposited merely in Dutch, or were there not translations?—I expect there were translations; but that would be the Railway Share Trust business.

3767. I only want to know how this French translation came to be used?—I understand, from what I have seen, that that was the translation that they used always. None of them knew Dutch.

3768. I suppose the Oppenheims used it?—Oh, yes, they used it, and the directors used it. Everybody used it.

3769. The Oppenheims were virtually Frenchmen, and they had for their purpose this translated into French?—I think it was Warnant more particularly—no, it was not him, it was translated before, at the very beginning, when there were negotiations with d'Adhémar. It was done at Pretoria.

3770. It was done for the benefit of the Oppenheims, I suppose?—I expect so, for the registration of the Belgian company.

3771. It was sure to be done for the Oppenheims, because they would not understand Dutch any more than you would?—No.

3772. Therefore, they could not have worked it at all unless they had a document they understood?—No, they none of them understood Dutch.

3773. Then it came forward to you in French, which you understood as well?—Yes; but I wished this morning to point out, only I think you went on to something else, that there has been a great question about that within the last year between the Belgian Government, or whoever it is who is prosecuting, as to the words in Article 25, *pour autant que*. Then it appeared that M. Aubert made two translations, and there is a translation with the words *pour autant que*, and there is a translation with the words *ou autant que*. *Ou autant que* is stronger than *pour autant que*, because *pour autant que* means x equals x; but the words *ou autant que* were only discovered about a year ago, and then it was made a charge against the promoters that they had wilfully altered that, and they said there was another translation by M. Aubert, which had the words *pour autant que* in it. I only mention that, not that it affects us in the slightest degree, but to show there was another translation, and there was a question about it, but the only one anybody ever had is that one you have before you.

3774. (*Mr. Ashmore.*) I should have thought the fact that it has no meaning would have led whoever was responsible to have consulted the original?—A great number of people have consulted it, and I do not know that they are more certain. It is only a sort of mixed Dutch.

3775. (*Chairman.*) Do you want to give any further evidence?—You have suggested to me we should give further evidence as to the question of the negotiations with the Government, and what we have done in the way of asserting our rights all these years.

3776. I do not know whether you are able to give it now or whether you can give it to-morrow?—To-morrow is rather soon, is it not, because it means looking through hundreds of documents, and perhaps I shall have to apply to our lawyers in Brussels. I should not like to undertake to be ready to-morrow with details on those points. I do not want to labour with you any point, because our strong point is that we have nothing to do with anybody whatever except Van Blokland. I have heaps of evidence, but I should not wish to go on labouring it if I have made my point clear to you.

3777. You have made it quite clear; he was the man with whom you dealt, and with whom you were in the ordinary course to deal; but you have not made it in the least clear that he did not reserve this point against you in the correspondence. I do not wish to express a final opinion upon it, but in that letter of August 4th, the point was expressly reserved?—I should like to consider a little as to that.

3778. There were a certain number of points in issue as appears in the correspondence, and it says: "The second point mentioned in this telegram is relative to the reimbursement by the company of £1,000 paid by it at the time of the completion, and which ought not to remain to the debit of the Government." Then this is the company writing: "Here again we are agreed there are certain sums paid at the time of the completion which are improperly paid"—that is what it comes to—"and the company undertakes to carry to the credit of the Government such sums as are agreed between the Government, and the company shall remain in this category." It is no good hiding your head in the sand—that is not a

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giving up of that point by Van Blokland, but on the contrary?—No, but I now find there is a letter from the commissioner to the local Board discussing these points of detail, which clearly sets out convincingly what were the points particularly alluded to.

3779. What commissioner?—Mr. Smit, the railway commissioner.

3780. That is another point. If you could find any abandonment by the Railway Commissioner of the point that there had been a fraud in the payment connected with the institution of this company, I shall be surprised. I have not seen one myself, or anything like it. That by no means proves it is not so, but unless you can refer me to it it seems to me contrary to the tenour of the whole of that gentleman's attitude, which is one of extreme hostility to the company?—Quite so, but I am not saying for one moment that Mr. Smit abandoned it, but the local Board wrote at once to enquire what were the matters to which they objected, and there is, I think, a letter on that subject.

3781. In addition to the Warnant contract?—Yes.

3782. But this was right on the Warnant contract?—One view I should wish to put forward on behalf of the shareholders is that the Government abandoned it.

3783. You have not shown that at present—I have looked through all the documents you have supplied me with, and all it comes to is that they knew of the cession, and I think it is perfectly true what you said this morning, that they made certain propositions with regard to the moneys paid to the original concessionaires, Porcheron and Co., which were inconsistent with the strict reading of that concession. That much, I think, is established, but no more.

(*Mr. Loveday.*) Mr. Smit as far back as his Report of 1894 said they opposed the issue of one million of debentures, and, further, could not commence this issue until a radical change was made in the constitution and administration of the company. That was Mr. Smit's position, even in 1894.

(*Chairman.*) Cannot you do the best you can for us to-morrow by looking through your letter books and memoranda? Have you anything you wish to say, Mr. Stephenson;

(*Mr. Stephenson.*) I can tell you, sir, if you will allow me, that in acting for the trustees we have throughout, from the very beginning, carefully considered and discussed with our clients and gone into the question whether the shareholders ought to insist on any steps being taken. We came to the conclusion that it would be ill-advised, and we should gain nothing, and it would be injudicious to attack Oppenheims, at all events, up to the present time. As regards taking proceedings in the Transvaal, it is an open secret known throughout the world that during the last three years until the Government of the Transvaal was effaced, there was not one independent or respectable judge on the Bench after the case of Brown. You, sir, suggested that we ought to have taken proceedings in the Transvaal courts against the Transvaal Government. You remember the circumstances of the Chief Justice retiring or being given his dismission because he gave judgment against the Transvaal Government. To have taken proceedings, or to have advised anybody to take proceedings against the Government in their courts, I could not, and we did not do it.

(*Chairman.*) You see where you are leading to—therefore, so far as the value of the shares was concerned, your recourse to the Transvaal was hopeless, you thought, and always hopeless?

(*Mr. Stephenson.*) Yes, proceeding on the concession. You put it to us that as the Government had repudiated this concession, why did you not take steps to compel them. We did not take those proceedings, and, further, we always maintained throughout the correspondence that any dispute, whatever it was, if the company was affected, was to be submitted to arbitration by the terms of the concession, and that we have pleaded in the courts of the Transvaal.

(*Mr. Evan-Thomas.*) We tried very hard to drag them in in proceedings here, but you know the doctrine of Sovereign powers. They brought the Van Blokland documents here, thinking we should get discovery, and then it was refused on the ground that they were a Sovereign power.

(*Chairman.*) There was some action before Mr. Justice North, was there not?

(*Mr. Stephenson.*) Yes.

(*Chairman.*) What was the name of that action?

(*Mr. Stephenson.*) That was an action by the Transvaal Government against the Selati Railway in this country.

(*Chairman.*) It was an action which was brought, and which was never brought to completion—there was an action brought against the company by an aggrieved shareholder who subscribed under that prospectus, was there not?

(*Mr. Stephenson.*) There were two actions—an action by a Mr. Kitchen.

(*Chairman.*) Who was that action brought against?

(*Mr. Stephenson.*) Against the trustees and the Oppenheims, and, I think, the Mercantile Development Corporation.

(*Chairman.*) Was it brought against the persons who were responsible for that prospectus;

(*Mr. Stephenson.*) It purported to be.

(*Chairman.*) Was that action tried?

(*Mr. Stephenson.*) I only represented the trustees.

(*Chairman.*) Was the money claimed by that shareholder paid in full, and the costs of the trustees paid?

(*Mr. Stephenson.*) My clients', the trustees', costs of that action were paid, and it was dropped.

(*Mr. Evan-Thomas.*) They paid mine and the Mercantile, and everybody except Oppenheims. I made no arrangement, but the Oppenheims may have done.

(*Chairman.*) Did the aggrieved shareholder, or the shareholder who said he was aggrieved get paid?

(*Mr. Stephenson.*) Not by us.

(*Chairman.*) Do you know, as a fact, whether he was?

(*Mr. Stephenson.*) I do not know, as a fact.

(*Chairman.*) Do you believe he was?

(*Mr. Stephenson.*) I cannot express an opinion. I could not say. I had nothing to do with any payment to him. All I know is the action was dropped, and my clients' costs were paid.

(*Chairman.*) But you gave your answer very guardedly. Do you know of his having been paid by someone?

(*Mr. Stephenson.*) I did not hear of his having been paid by someone, but I did hear of an arrangement having been made by someone.

(*Chairman.*) You do not know who that someone was?

(*Mr. Stephenson.*) I should not like to say.

(*Chairman.*) I should like you to say particularly.

(*Mr. Stephenson.*) I should imagine it was Oppenheims. I can only say what my belief was, and I believe it was Baron Oppenheim.

(*Chairman.*) You have told us what you have to say about the Transvaal courts, but in the Belgian courts the shareholders would have had a remedy, would they not, against the Oppenheims?

(*Mr. Stephenson.*) They are French subjects, to begin with.

(*Chairman.*) I do not say you are not quite right, but did you consider the question of seeing Baron Oppenheim or of making *parti civile?*

(*Mr. Stephenson.*) Certainly, we considered all those questions.

(*Chairman.*) Were you advised on that?

(*Mr. Stephenson.*) We discussed this not only with our own clients, but with Mr. Lea, who is the solicitor acting for the shareholders. I also went over to Belgium myself.

(*Chairman.*) I suppose you were also influenced by the fact that there is a certain difficulty—in fact, that the title of your shareholders might be rendered worse by impeaching Oppenheim's action in the matter?

(*Mr. Stephenson.*) Our view has been throughout that we have nothing to do with the Oppenheims. What has taken place between the Oppenheims and the Government took place before any of the *bonâ fide* shareholders had anything whatever to do with it. If we admit that the Oppenheims had done anything wrong, or alleged that they had done anything wrong, we might have let the Transvaal Government out of the guarantee. We say we had far better hang on to the Government guarantee without impeaching our title.

(*Chairman.*) That is a very reasonable thing, but not quite a consistent one. If you had nothing to do with the Oppenheims, then the fact of their being convicted of fraud cannot have anything to do with you?

(*Mr. Stephenson.*) I do not think it has.

(*Chairman.*) Why did you not convict them of fraud? If it was a fraud, why not sue them for damages?

(*Mr. Stephenson.*) They have not defrauded me of anything, and under my concession the Transvaal Government have to make good any money that is not there. The Government have to make good any deficiency. It is not I who am defrauded; it is the Transvaal Government. It is so if you look at the concession.

(*Chairman.*) I am only speaking as an English lawyer, and I should have thought with regard to people at whose expense a profit of £400,000 had been made by their Directors, it would not have been harsh to say they had been defrauded.

(*Mr. Stephenson.*) I think there might be very great difficulty in establishing anything and in getting anything, and you have also to remember the risks that one might run.

(*Chairman.*) Those considerations prevailed with you?

(*Mr. Stephenson.*) They did.

(*Mr. Loveday.*) How did you propose to complete the railway, as you could not get more than the two millions, that is, capital and debenture issue? *Mr. E. Evan-Thomas.* 13 Dec. 1900.

(*Mr. Stephenson.*) Until the war broke out there was pending litigation between us and the Government, and one could not say what the result of that would be.

(*Chairman.*) You have given us a fair indication of what you thought it would be?

(*Mr. Stephenson.*) Yes, but we had to wait our time.

(*Chairman.*) Then we will hear Mr. Thomas further to-morrow.

(*Mr. Ashton Cross.*) Do you propose to examine Mr. Winby? He is here, and ready to be examined.

(*Chairman.*) No, I do not think so, at present.

(*Mr. Evan-Thomas.*) I should like to describe the negotiations which took place between the company and the Government, and so on, of which the last was the most promising. Each one got better; there was always something going on.

NINETEENTH DAY.

ALBANY BUILDINGS, 47, VICTORIA STREET, WESTMINSTER.

Friday, 14*th December*, 1900.

PRESENT:

Hon. ALFRED LYTTELTON, Q.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY

Mr. BERNARD HOLLAND, *Secretary*.

SELATI RAILWAY CONCESSION (Continued).

Mr. EDMUND EVAN THOMAS, recalled; and Examined.

(*Witness.*) Mr. Loveday asked me yesterday about the time at which the cheque was stopped, or, at all events, the last cheque received from Van Blokland by the company. It was on the 11th of January, 1895. That was for £30,000, and the company already had about £30,000 in hand. Then, when the next cheque was required for Westwood and Winby, which was in March or April, I cannot exactly say without the book, but it was only then after the sale of the shares in London that Van Blokland said he had instructions to make no more advances to Westwood and Winby.

3784. (*Chairman.*) One question as to this balance sheet. It is written "as approved by the Government." I think you said it was approved by the Government and drawn up by Westermann?—Yes.

3785. What evidence have you that it was approved by the Government or drawn up by Westermann?—I have ample evidence of that. We have a letter from Van Blokland advising the arrival of Westermann, and then Westermann sent his report to Van Blokland, and Van Blokland sent it to the Transvaal, and they received it about April.

3786. Are there documents showing that?—Yes.

3787. We should like to have them—any evidence that you have that the balance sheet of the 31st of December, 1893, was compiled by Westermann, and (2) was approved by the Government?—Shortly, I may say that Mr. Smit, in his report to the Volksraad in 1894 produced the balance sheet and quoted it. Then there is one other small point I meant to allude to yesterday. In the bundle of documents I put in there is a letter from Baron Oppenheim to the minister, and the minister's reply. It is in group 3, letters D and E. The date is the 19th of December, 7894, and you will see there that Baron Oppenheim says to the minister he forwards a letter from me. Now, I have hunted high and low, but I cannot find it, and Baron Oppenheim kept no copy. No doubt it is among the minister's papers, if they have not been destroyed, as I rather gather they have. "After having given them, as I thought, complete satisfaction, I returned here at the end of the week, when I received the letter which I have the honour to send enclosed to your excellency." It was exactly to the same effect as the letter of Loder and Bik which I read yesterday. I remember distinctly what it was. The whole contention of the letter was that supposing, under article 37, the company did not meet its expenses from its revenue, would the 4 per cent. be paid. It was the old question of interest—clause 27 in another form, and he merely replied: "I am not so happy as to be able to advise you as to the second question you have addressed to me. An interpretation of the concession is there in question. I could only refer it to my Government if you think fit to express to me the wish." That point was exactly with regard to that word interest in clause 27, which was the point I mentioned yesterday. 14 Dec. 1900.

3788. What you call the "fixum"?—Yes. Now, sir, in accordance with your wish I have got out a rough list, a sort of journal of the action taken by the company on our side from the date of Mr. Smit's letter.

3789. That is from June the 7th?—Yes. It meant going through several hundreds of letters last night, and I could probably multiply them a good deal if I had time, but I think this is quite sufficient.

3790. You will put in this document?—Yes.

3791. We had better know how it is compiled—is it compiled from the letters in your possession?—From the letters and telegrams.

3792. I see there are certain facts deposed to, like

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"Smit sails for the Cape"?—Yes, that is within my knowledge.

3793. Are those facts derived from the documents in your possession, or are they from your memory?—That particular fact is in my memory because Mr. Smit's letter was posted (and that was one of our first difficulties) in the Stock Exchange after he had sailed, so that we here had no possible means of referring to him or asking what was meant, and Mr. Montagu White, the Consul, also went away on the same day too. They all seemed to shy off from enquiries.

3794. Speaking broadly, the facts you have stated in this document are facts within your own memory, after refreshing your memory with the documents?—Yes, but I do not wish to say that it is complete.

7th June, 1895.—Smit's letter to the Stock Exchange, first intimation of conditional or anticipated repudiation of interest due on shares on 14th July, 1895.

8th June, 1895.—Smit sails for the Cape.

June, 1895.—De Jongh, Chairman of the local board in Pretoria, was in Europe.

June, 1895.—Interviews with De Jongh, and he was instructed to go into the matter with the Government on his return to Pretoria. De Jongh returned to Pretoria.

December, 1895.—Dr. Leyds in Europe.

20th or 21st December, 1895.—Baron R. Oppenheim visited Dr. Leyds in Berlin with a view to a settlement.

3795. Does that appear from a letter?—Yes, this is a letter I was going to put in.

23rd December, 1895.—Letter from Oppenheim to Dr. Leyds, recording terms discussed at interview.

February, 1896.—Further interviews, Oppenheim and Leyds.

11th March, 1896.—Proposals by the Government of terms of settlement made to Oppenheim, not to the company. Negotiations between Government and Oppenheim proceed.

9th May, 1896.—President Kruger's address to the Volksraad stating that works delayed, and negotiations pending for a satisfactory solution of difficulties.

31st May, 1896.—Government and Oppenheim agree terms of settlement, and these submitted to the board of the company, Paris, and same was to be submitted for approval to the shareholders.

16th June, 1896.—Trustees' Solicitors wrote to the company urging that Evan-Thomas should be President in place of Oppenheim.

27th June, 1895.—Meeting of shareholders held in Brussels, and the proposed compromise was refused. It was also decided that Evan-Thomas should become President in the place of Oppenheim.

2nd July, 1895.—Evan-Thomas writes to Beelaerts van Blokland for an interview.

6th July, 1896.—Evan-Thomas and Ghysbrecht, the company's lawyer, saw Mr. De Brauw, the counsel for the Government at the Hague.

30th July, 1896.—Oppenheim, in Paris, receives telegram from Stegmann, urging their making an offer.

6th August, 1896.—Company in London wires Stegmann terms they will accept, and requests him to wire to London, and not to Paris.

About that time De Jongh left the firm of Stegmann and De Jongh, and therefore all telegrams are to Stegmann, but De Jongh still gave us his assistance in negotiations with the Government.

10th August, 1896.—(Group 20 N.) Letter from Smit to local Board that Government considered concession lapsed.

That is in Group 20, letter N. The first intimation we had anything about the capital not having been paid up.

September, 1896.—Negotiations opened by Government for continuation of works of the railway, and these negotiations were continued until February, 1897.

14th March, 1897.—Van Blokland died.

3796. (*Chairman.*) Negotiations opened by Government with whom?—With the company. Then:—

March, 1897.—Transvaal Government instituted proceedings in England against the company to restrain them from touching the £330,000 deposited in London in joint names of Van Blokland and Baron Oppenheim. In those proceedings company counterclaimed for damages for breach of concession. company's counter-claim struck out on grounds that the Transvaal Government had only submitted to British jurisdiction so far as the £330,000 account was concerned.

I think we have put in a certified copy of those proceedings?

3797. No, we have not seen it?—I understood that was put in by Mr. Henderson. They will be put in.

3798. Some interrogations were sent to Mr. Loveday, but I have never seen any copy?—We must put them in.

These proceedings continued until May, 1898.

May, 1897.—Proceedings commenced in Pretoria by the Government against the company to cancel the concession.

November, 1897.—Company's claim for arbitration refused in the High Court in Pretoria.

January, 1898.—Defence and counter-claim put in and proceeded with until the summer of 1898, when the high court in Pretoria stayed all proceedings until the company was given back all its books and papers, at Brussels. These books and papers have never been given back.

31st March, 1898.—Company wrote to the Colonial Office for intervention in getting the litigation in the Transvaal adjudged by some impartial judge.

May, 1898.—Colonial Office replied stating they could not interfere.

That referred to an answer Mr. Chamberlain made to Sir Ashmead Bartlett that they could not interfere in the affairs of the Transvaal.

October, 1898, till December, 1898.—Further negotiations between De Jongh and Kruger direct in Pretoria. Government suggested paying shareholders £11 per share for three-fourths of the capital, being controlling interest.

December, 1898.—Statement in Volksraad by President Kruger that he required money to purchase controlling interest in the Selati Railway Company shares.

March, 1899.—Application by the company to the Transvaal Courts to release some of the funds for purposes of defence.

August, 1899.—Application refused.

October, 1899.—War.

There is missed out in June, 1896, and again in December, 1896, a very warm correspondence between me as president of the company and Van Blokland about our refusal. We refused to go on advancing the debenture interest. Now, sir, I will be quite short, but there are several points I want to call your attention to. You asked me yesterday when it was I first heard definitely about what was going to be done against the Oppenheims. That date I am able to fix. It was when I went to see De Brauw on the 6th of July, 1896. They had not decided evidently what they were going to do, but they talked in general, and there was a discussion as to points of law between him and Mr. Ghysbrecht, and then he and I had a talk, and he put to me how we and the Government had been defrauded, and that the Government was so sorry for us, and I said that we did not look at it in this way, and that there would have been no deception and no nothing if it had not been for their minister, and I took up the line that if it had not been for Van Blokland their minister any deception would have been quite impossible, and we considered ourselves as being bound to take no less than our principal and interest. That is the line we took and stuck to ever since.

3799. Is there an entry in the journal that brings that to your mind?—Mr. Ghysbrecht, the new lawyer who had just been appointed to represent us, was with me, and he can corroborate me. Now you see the entry there on the 20th or 21st of December, 1895: "Baron R. Oppenheim visited Dr. Leyds." From June, 1895, up to June, 1896, till the Government wrote and said they were going to take proceedings in Pretoria, the whole thing slept in Brussels—that is to say, there was nothing

done, there were no further interrogatories, and nothing was done really at Brussels till after we had put in our counter-claim in December, 1897.

3800. From what date to what date?—From 1895 to 1898. Practically the papers all slept in the boxes at the Government offices in Brussels, and nothing was done by the Transvaal Government or by the Belgian Government. The real crux and interrogatories and proceedings and everything began in Brussels in the beginning of 1898, within a measurable time of the company having put in their defence in Pretoria, and up to 1896 the Government themselves, as you will see from the letters I am going to read to you, which are from the lawyers of the Government to the lawyers of the Oppenheims, were doing nothing except threatening: "If you don't pay up and if you don't settle we will instruct the judge to go on." There is letter after letter from the Government lawyer showing that was their attitude in 1896, and therefore nothing definite had been done. At first after 1895 we here in England, of course, were expecting and were led to expect from everybody that this was a matter that would be settled between the concessionaires and the Government.

3801. When you say the papers were left in the boxes, you mean the prosecution, so far as any overt act was concerned, dropped?—The complaint was not gone on with. It did not come to any question of prosecution; it was merely an inquiry.

3802. Do you mean no step in the inquiry was taken between 1895 and 1898?—No, nothing definite. They occasionally sent for an employé and asked him something just to keep it alive. I understand from Mr. Ghysbrecht they have to do that to keep the thing alive, but nothing definite whatever was done till the beginning of 1898 so far as we know.

3803. (*Mr. Ashmore.*) That is in the proceedings initiated by Mr. Smit against the Oppenheims?—Yes. I was explaining the attitude we took up with Baron Oppenheim. Then in November and December, 1895, seeing things did not go on I wrote to Baron Oppenheim: "You have got us into this mess, and you have got to get us out of it; we have no papers, and you must give us all the materials to defend ourselves." And he said: "I most certainly will." And he was negotiating then, as you see from his letters written to these people, and we sat by, and it was not until March, April, or May, 1896, as you see from this correspondence, that the company was first brought into it. The whole negotiations and cables from Pretoria were between the Government and Oppenheim They would not have anything to do with the company. They did not want to because they had nothing to say to the company, and all their claims of money and everything from the very first have been that the money was to be paid back to the company, and everything was done for the defence of the company. All their claims on the Oppenheims, and all their claims up to the present until they started the proceedings in Pretoria in May, 1897, everything was directed to restoring to the company, and to that the guarantee in that authorisation of the Executive Council of August, 1894, was directed, and it was to be paid back not by the company, but to the company by a third party, and so the Government never suggested for a single moment that anything was to be done by the company or against the company till May, 1897.

3804. The suggestion was, was it not, that the company had been defrauded of its share capital?—It had been defrauded, and somebody was to pay it back. The company could not, because it had nothing.

3805. The company had been defrauded by the Oppenheims of its share capital: that was the position of the Government?—Yes, but they did not claim anything whatever against the company till May, 1897. Now I should like, if I may, to read these letters. I have not been able to translate them, but I can read them almost as quickly as I can read English, and you can look at them yourself, or perhaps you will allow me to give you the substance.

3806. The best way will be for you to give us the substance of the letters, and afterwards, if you can have the letters you rely upon translated, you can send both the original and the translation in to us?—The first letter is the 23rd of December, 1895, written from Berlin, where Dr. Leyds was, from Baron Oppenheim to Dr. Leyds.

3807. What do you say you are going to establish by these letters?—I mean to show you that this negotiation which took up the whole of May arose and was followed on between the Government lawyers and the Oppenheim lawyers, and then the company came in. It establishes exactly where we as a company separated ourselves from the Oppenheims and appointed our own lawyers and took our own line, which we have followed ever since, and I will explain why we did not do anything at first. The letter is from Baron Oppenheim to Dr. Leyds, and I will quote the first paragraph, which says: "According to the desire expressed by your Excellency I have the honour to enclose the notes taken by me at the end of the interview that I had with his Excellency Van Blokland last Saturday, and on the subject of which I have to-day had an interview with you." Then follow the terms for a settlement: that they were to resign as directors, and that they were to be replaced by persons nominated by the Government; that Baron Oppenheim was to resign as trustee; that the Government should authorise the company to pay the interest due to the shareholders and withdraw the letter addressed by Mr. Smit to the Stock Exchange. These conditions, I say, until we came to the Board in 1896, were entirely of Oppenheim's own doing with Dr. Leyds, and he knew generally what was necessary for us, but we were not parties to this letter at all, but if it had been carried through it would have been very good. He had seen Dr. Leyds that day, and this was a letter reiterating what passed between them. If that settlement had been carried through it would, as far as the company were concerned, have given us everything we asked, and there would have been no case to-day. Then the next letter is from the counsel of the Transvaal Government in Paris, giving a copy of the telegram received from Pretoria. The date is the 11th March, and the cable is as follows: "In consequence of the telegram of Dr. Leyds, the Executive Council has authorised this Commission"—that was Mr. Smit, who had just been appointed—"to try and arrange in making with the company an agreement on the following conditions." Then follow the conditions that the Government propose, which I may summarise by saying it meant that the company were to give up everything and receive nothing. Then it is signed by Smit, and the company is to give caution money to the extent of £750,000. Then there is a telegram from De Brauw, the counsel of the Government at the Hague, also saying he had this telegram from Pretoria.

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Then they negotiated, and on the 7th May the Oppenheims and their adviser, M. Warnant, in the name of the company, write some letters to De Brauw, without having had the authorisation of the company at all, and making proposals in the name of the company. Then there was a board meeting, to which I went, and I was not at all satisfied that they had any authority or right to use the name of the company, and when I came back to London I discussed the matter, and we came to the conclusion we ought to have a new lawyer entirely of our own. M. Warnant had been acting as lawyer of the company in Brussels up to that date, and we came to the conclusion we must entirely separate the company from the Oppenheims. It was at this board that these counter-proposals of the company were read out. That was May, 1896. I read them, and there were three or four counter-proposals the company made with which I should have agreed; but, however, the Transvaal Government would only accept the one to which we did not agree, and the Oppenheims and M. Warnant had agreed to submit the matter to a meeting of shareholders, which was to be summoned on the 27th June, 1896. Of course, we had the majority and the control of the thing, and I have here a letter from Messrs. Harwood and Stephenson, who were advising on behalf of the trustees, that they were decidedly against the proposal being accepted, as we all were, and accordingly, when the meeting came, we declined to agree to it. That was the meeting at which it was decided I was to be the chairman. That being the 27th June, that would have got out in the Transvaal about the end of July, and therefore that accounts for the statement that on the 10th August, 1896, the Government wrote the letter saying they considered the concession lapsed, and would we allow them to go on with the railway. You have the letter, sir, and more or less you are cognisant of that negotiation; but about that time we had a telegram, which I should like to read, because it just exactly shows the change in the management of the company from the Oppenheims to us. The first telegram is the 30th July, 1896. and is a telegram received in Paris by Baron Oppenheim, as the president of the company, from de Jongh, Pretoria—it was Stegman and de Jongh before:—"Have private information decision has not yet been arrived at. Proceedings have been delayed. Opinion Commissioner still possible get it settled friendly. Telegraph me fully what are your terms, by what authority to act.—Stegman." Then I replied from

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London:—"As per your telegram of 30th July, to Paris, on behalf of company, we are open to a proposal based any one first three proposals, as per our letter 8th May, sent to the care of De Brauw. Send cables to E. L. Evan-Thomas, London, with reference negotiations, not Paris." De Brauw is the Government lawyer at the Hague. That was sent on the 6th August, and then the next one is the 11th August:—"Official notice has been given that the Executive Council considers the Selati Railway concession lapsed, and intends taking over properties, because the Selati Railway Company has not complied with articles"—so and so—"if not replied within fortnight the Executive Council will consider the Selati Railway Company accepts position taken up by the Executive Council, and is prepared facilitate expropriation and liquidation. Handed notice to solicitors."

3808. Stegman was the company's lawyer, was he not?—Yes. There were three changes. First it was de Jongh and Stegman, and then de Jongh went out, and it still remained de Jongh and Stegman, with Stegman only in the firm. Then Esselin was taken in, and then it was Stegman and Esselin, and it is now another gentleman—Roos. The firm is Stegman and Roos now, but Stegman was the company's lawyer. There is also a telegram from de Jongh, who had then left the law, but had been chairman of the local board, and his firm were then the solicitors of the company.

3809. (*Mr. Loveday.*) That telegram you read is the result of the interview by Stegman with the Government.—That is it. Then, sir, as showing the attitude we took up on this letter of the 10th August, 1896, here is my telegram:—"What do they propose repayment shares? If you are not satisfied you must refuse to have anything to do with proposal"—of course, these are code words. "You must be very determined. Steps must be taken immediately resist. Send written protest the Executive Council. Telegraph us fully." Then he replied:—"I am acting in accordance with your advice. Referred matter counsel." Then they ask for some money, and I say:—"Will remit to-morrow £500 legal expenses. If more wanted telegraph promptly. Be firm. Have everything done that is required.—E. L. Evan-Thomas." That accounts for the time up to the middle of 1896, and shows the date when actually we took charge. In September, 1896, fresh negotiations began in Pretoria with a view to continuing the railway, and we could not agree upon terms with the Government as to on what terms we would allow it to be continued, and those negotiations were continued till February, 1897. Then Van Blokland died, and then we were in litigation.

3810. Were those negotiations with that Special Commission composed of Smit and others?—Yes, they were. Then, in March, 1897, there were these proceedings in London. The Government came to the jurisdiction here and went to the Court to prevent a new trustee being appointed until they fulfilled their engagements. Of course our object was to get them into the jurisdiction or to get them to make some claim which would bring them within the jurisdiction, but they were very careful to restrict their claim absolutely to the nomination of the new trustee. They made no charge, no claim, or anything, and, therefore, I am sorry to say, though we took a deal of trouble, because our object was to get discovery of Van Blokland's papers: they brought them over here because their own counsel did not seem to be certain whether we should not get discovery. We did not get discovery on the ground they were a sovereign power, and the papers were ultimately sent on to Pretoria. We put in a counterclaim, and raised everything here then, but that was struck out on the ground that they made no claim.

3811. (*Chairman.*) Your counterclaim was for your dividend?—And damages, and all sorts of things.

3812. Damages for stoppage of works?—Yes.

3813. And dividend—you could not have much more—however, one sees the sort of thing?—Then those papers went to Pretoria, and I am informed (I do not know) that there was a fire in that part of the Government building, not long afterwards, and I shall be very glad if by any endeavours of anybody we could get hold of those papers, because I am sure you would find them of the greatest possible use, and they would be of the greatest possible assistance to us.

3814. (*Mr. Loveday.*) When was the fire?—They went away from here about April, 1898, and the fire was some time about the summer of 1898.

(*Chairman.*) There are some papers coming from Pretoria which you shall have an opportunity of seeing if they are material.

3815. (*Mr. Loveday.*) You believe those papers are burnt?—I can only say that that is what I heard. I hope they are not. We tried in every way to get them, and they fought bitterly to prevent our having them. Then, sir, the last negotiations began, and, of course, they took the form of someone coming to buy up the controlling interest in the company. They went first to Baron Oppenheim, and offered to buy the controlling interest of the company. He, rather unwisely, I think, negotiated with them before he told me, because he had not got the control. However, he found he had to tell them he had not got the control, and I went over to Paris and saw them.

3816. (*Chairman.*) Who do you mean by "had to tell them"—whom?—Nothing came of the negotiations, so I will hand you the paper on which I have written a name; but President Kruger was a party to them, and we have proof from the other side that that was so. That was the gentleman who came. (*Referring to a paper.*)

3817. We must take that as only a person if you object to give the name. Somebody came?—Yes, somebody came. I went over and saw the gentleman, and he said parties in the Transvaal wanted to buy the control of the company. I said that was what we had got to sell, but he would not have anything to do with the English certificates, and wanted the trust dissolved. That went on for some time, and then eventually they made an offer of £9, which would then work out at about £13 on our shares, supposing that those shares I mentioned yesterday as being in our hands were destroyed. Then there were these cables that passed between the company and de Jongh.

3818. I do not see how negotiations between de Jongh and the company's lawyer in Pretoria and you over here affect the matter. What you are on are the negotiations with the Government, and you there appear to have been exchanging letters between your representative in Pretoria and your representative here, which do not seem to have much to do with it. It is not material as against the Government. If they were communicated to the Government it is another thing?—From de Jongh, Johannesburg, October 17th, 1898:—"J. N. de Jongh seen President Z.A.R. Would be in favour if purchase price £11. Instructions by wire required.—J. N. de Jongh, Johannesburg." That is the same time as the negotiations took place in Paris. Then we sent our terms to de Jongh that we would take £11 10s. if you withdraw all law finally. Proper expenses the Selati Railway must be paid to date. Arrangement when made must remain until one week secret, enable Paris complete purchase foreign shares." They wanted a great deal more shares than we had got in London—of course, directly it became known that there were negotiations those 5,000 shares would have been unobtainable except at high prices, and it was necessary in order to keep to the price £11 10s. that they should be bought at a very low price.

3819. Then would the 5,000 have exhausted the entire amount of share capital?—No, there would have been still 5,000 outside.

3820. How were you dealing with that?— We had nothing to do with that; so long as they had the absolute control they could liquidate the company and do what they liked they did not want the whole of the shares. Then there is a telegram from de Jongh, Johannesburg, November 7th, 1898: "Your telegram to hand. The Executive Council taking into consideration. Will probably have delay on account of war natives. I am doing my best. News expected daily. I will telegraph." Now this is the thing that confirms it: "Cape Town, December 1st, 1898. During discussion at Volksraad on subject of loan"—they were then trying to raise a loan of two millions—"President Kruger stated requires money purchase controlling interest shares in the Selati Railway. As per your letter of 5th day of November, English holders do not make an unnecessary sacrifice shares in the Selati Railway Company. I have now every confidence get it settled." That I think must be within the knowledge of the Government, because it was all in the newspapers at Pretoria that President Kruger did say that.

3821. Anyhow in December, 1898, it shows the actual offers were under consideration?—Yes, we had an actual offer in July which we refused.

3822. But still an offer was under consideration in

December, 1898, in the Transvaal?—Yes, a new one at a good deal higher price.

3823. It sprung to £11 10s from £9, did it not?—It sprung from £9 to £11, and we said we would take £11 10s. on terms. All we wanted was to get our money back here and the interest, and that was all we cared about or ever cared about. Then, sir, I should wish to put in both the prospectus and the trust deed of the sale as settled by counsel, and the instructions to counsel. (*The witness handed in the documents.*)

(*Mr. Stephenson.*) You asked some questions on the prospectus yesterday, sir, and these documents show it was settled by counsel and was gone through carefully, and you have there the trust deed too.

3824. (*Chairman.*) Then there were some Belgian opinions you referred to?—They are Belgian and French. The French is more important, I suppose, than the Belgian, because the Oppenheims are French subjects. I have them here, but I have not got them translated. (*Producing same.*)

3825. Perhaps it would be better to have these translated. Do they recite the questions put to them. Is it in your mind what they were addressing themselves to?—It was entirely as to lump sum or no lump sum.

3826. Entirely as to that question of construction?—Entirely as to that question of construction. They go into it at great length. It is all upon Article 25.

3827. Does it appear from that that they had before them the whole concession?—It is Article 25 of the concession.

3828. Who submitted those questions—did you submit them?—No, they are the Oppenheims; they are merely sent to me.

3829. You have not got the instructions on which they wrote their opinion?—They recite everything here. They do not do it in the same way that we do, but they recite all the papers.

3830. They do very often make very elaborate recitals, but if they only had a part of the case it may make a difference?—They had all the letters because they refer to all the letters.

3831. If this is an opinion on instructions submitted by the Oppenheims, and you have not got the instructions that they gave to the lawyers you cannot give them to us. We must make the best we can of that. How did these opinions come into your possession?—The Oppenheims had them printed, and sent them to everybody. I should wish here to say what I forgot to say before, that although we did not go on separate lines with the concessionaires, there has never been the slightest arrangement, or undertaking, or agreement, or anything as to what our future relations shall be. It is merely that they sent us these papers, because if we are satisfied it is better for them. That is how we got these things. We have nothing else to assist us of our own, because our own company's papers have been in boxes in the Brussels Court since 1895. These opinions, I think, speak for themselves, and I only put them in exactly for what they are worth. It is difficult to show you what the French view of this Clause 25 is as to whether it is a lump sum or not. The opinion sets it all out, and it shows they had the concession before them, and they mention it.

3832. (*Mr. Ashmore.*) Are you able to put forward any reason for the action of the Railway Commissioner Smit, who takes up a line that was quite independent of all that had gone before? Of course, to a certain extent it must be mere surmise, but we can find no explanation of his action consistent with the story that you put forward?—Well, sir, of course you know it has been stated that he was rather busy in the early part of the history of the railway in connection with some contract about the streets of Pretoria; and it was only after that was completed that he was given the office of Railway Commissioner, and the company dealt with Dr. Leyds up to the end of 1892. Then the Railway Commissioner (I speak from the documents that I now see, and not from those I saw at that time) was neutral up to the end of July, and then I know from a letter I have seen applications were made in a general way, not in connection with Smit, that it would be desirable (I have seen a letter to the Oppenheims) if some money was sent out there, and the Oppenheims were not then in a position to send out any. I also have been told by De Jongh several things. Smit was not connected with the railway in its earlier stages before the company was formed. He only became a Commissioner in 1892. May I further say that I have actually often tried to see exactly what was the ruling motive of everybody. I think I can show you that in the first instance what was evidently in President Kruger's mind, and why he backed the thing so tremendously before the company was formed was because he was so anxious to get the railway made by French capital, and to get French capital into the country. There are several things which I can show you which go to show that, and that he was intensely afraid of the concession getting into English hands. I can only explain all those incidents at the end of 1891 and the beginning of 1892 by the fact that he considered the interests of the company required that Oppenheims should be backed, and that the railway should be formed with French money.

(*Chairman.*) There is some evidence of that.

3833. (*Mr. Ashmore.*) That appears rather from the history of it?—Yes, but the first letter that appears anywhere from the Transvaal Minister to Baron Oppenheim is to say that his Government telegraphed him that Baron Eugene Oppenheim has made them an offer of a loan—that is the loan that was afterwards made by the Rothschilds—and they were trying everything they could at that time to raise the money in France.

3834. (*Chairman.*) That is rather remote?—I had a little evidence to show all through the letters that there was a specific desire that it should be a French company.

3835. You have not gone beyond December, 1898, in developing your statement. You say in March, 1899, there was an application by the company to the Transvaal courts to release some of the funds for the purpose of the defence, and there was a refusal of that application. Those are the only incidents you mention in your list of dates connected with this matter in 1899?—Because the court had stopped the proceedings in Pretoria. We could not go on, and then came all the questions between the two countries, and President Kruger was too busy to think about the Selati Railway.

3836. I did not quite follow after this statement by the President as to the purchase in December what terminated that negotiation?—We telegraphed on the 17th December to leave it in De Jongh's discretion to withdraw the offer or not, and he always took about two months to send an answer to any telegram, and by the time one was due I think they were too busy with other things.

3837. That terminates it?—Yes. That had been going on all the year. First they tried it through people here, and then that having dropped through in September, 1898, they took it up again. You can see from the papers and I can produce evidence of that that Van Blokland never paid any attention to Mr. Smit or his commission or anything.

3838. That is what we were noticing, that apparently the Transvaal is advancing on a double front, one consisting of the President and the Executive, and the other the Railway Commissioner, on the flank, and the Railway Commissioner is running a somewhat different course from that which the President and the Minister are running. We want, if possible, to have some explanation of that?—Mr. Smit's Commission did not want a settlement, because I know that a friend of one of its members wrote home to a friend in Holland congratulating him on having been appointed to such a magnificent thing. Of course, they got a large salary and they did not want a settlement.

3839. Do you wish to add anything further?—No, sir.

(*Chairman.*) Mr. Lea, do you wish to supplement anything that Mr. Thomas has said?

(*Mr. Lea.*) I do not think so, sir.

(*Chairman.*) Perhaps you had better be called.

Mr. G. H. C. Lea, called; and Examined.

Mr G. H. C. Lea.
14 Dec. 1900.

3840. (*Chairman.*) You are the solicitor for the committee of shareholders?—For the trustees of the certificate holders.

3841. You have heard the statement that has been made by Mr. Evan Thomas, the Chairman. Do you wish to add anything?—No; I think what Mr. Evan Thomas has said has sufficiently shown why the committee took no independent action against the vendors. They considered it absolutely unnecessary in view of the negotiations which were pending apparently direct with the Transvaal Government. Any independent action would have, in the opinion of the committee, prejudiced those negotiations. I suppose it has been sufficiently shown to you that the holders of these shares are absolutely innocent holders for value without any notice of what transpired before.

3842. Yes, I think it has. You are speaking for those who responded by subscription to the prospectus?—Yes, we had no notice.

3843. You had no notice other than was contained in that prospectus?—Yes, and I may add we are advised that in view of the various certificates given by Van Blokland, and the settlement by him of the share certificates, that independently of any claims of the Government against the company we have an independent case.

3844. You say you are *bona fide* holders for value of an instalment of guarantee signed by the Government of the Transvaal which has come into your possession by purchase?—Yes, and without any notice.

3845. That you were ignorant of any taint there might be in the origination of the concession or otherwise?—Yes, that is my position. I cannot say anything further.

(*Chairman.*) Mr. Hume Williams, has Mr. Winby ever put a figure on his claim?

(*Mr. Hume Williams.*) Approximately, £90,000 is the claim against Mr. Winby by Toleman's executors under the two agreements with the accruing liability. I am not sure that Mr. Winby ever has put a figure on his claim.

(*Mr. Tatham*, Mr. Winby's solicitor.) Yes, he has sent in a claim to the company on two or three occasions. The last claim was £522,000, but that is without taking into consideration the claims of other sub-contractors.

(*Mr. Hume Williams.*) I rather understood you to mean his claim against the Transvaal Government.

(*Chairman.*) Against the company and against the Transvaal Government.

(*Mr. Winby.*) Both of them. The claim has been sent direct to the company.

(*Chairman.*) I suppose you had no relation with the Government directly?

(*Mr. Winby.*) Not directly.

(*Chairman.*) The person, or rather the corporation, you looked to was the company?

(*Mr. Winby.*) Naturally.

(*Chairman.*) And your claim against them was £522,000, but does that include the £90,000?

(*Mr. Winby.*) Yes, the £90,000 is included in that. The claims of Toleman's executors are included in that.

(*Mr. Ashmore.*) You say there are other claims besides that?

(*Mr. Winby.*) There are other claims—that is to say, from sub-contractors. When I took the contract for the line I covered myself by ordering the whole of the materials necessary for the completion of the line, and when the line was stopped, though I had about between 16,000 and 20,000 tons of materials on the water and there, and I had also 7,000 or 8,000 tons of materials lying upon the dock side which had not been shipped, and rolling stock and other things, and I have not yet received from those sub-contractors their claims against me consequent upon the stoppage.

(*Chairman.*) Do you remember when your work was definitely and finally stopped?

(*Mr. Winby.*) It was never definitely stopped. We were never told we were not to go on. We were always informed: "We are going on this week, or next week, or next month," and so on. The only mode by which we were stopped was that after laying out the route of the line, and surveying it, and contouring it all the way through, we had to make definite plans and sections for every 10 kilometres, and those sections were sent consecutively to the railway company for the approval and signature of the engineer of the railway company, and also of the railway commissioner for the Transvaal Government, and they were duly returned, and we proceeded with the work as we went along, but after finishing to kilometre 119, the plans were sent on to the railway company for those signatures, and they were never returned.

(*Chairman.*) When were they sent on?

(*Mr. Winby.*) They were sent on in the early part of 1895, and up to August or September, 1895, the whole plans for the line throughout.

(*Chairman.*) If there is a point of time at which you were stopped it was when you had sent in the plans for the necessary authorisation, and did not receive them back.

(*Mr. Winby.*) Precisely so.

(*Chairman.*) And you put that as in August and September, 1895?

(*Mr. Winby.*) No, I put that from about June to July, 1895. I can give you the exact date, but I have not it with me now.

(*Mr. Hume Williams.*) My clients have had a letter from the solicitor to the Treasury, who says that the Attorney-General would desire a short, independent statement of his position in reference to this matter to be put to you, and it would greatly assist him if we could send a telegram to Mr. Parker to let him know when you would be likely to take that branch of the case. I suppose that is in ignorance of the fact that we had already stated part of the case to you. I do not know what course you are going to take with regard to this gentleman, Mr. Winby, but if you are going to take his evidence——

(*Chairman.*) Oh, no. We have got the outline of his claim. We have nothing to do with its merits.

(*Mr. Hume Williams.*) Then perhaps at some convenient time to yourself you would allow Mr. Parker to make a short statement to you. I suppose he would more directly represent the Attorney-General than I do.

(*Chairman.*) If you could communicate to him the reference we propose to ourselves as to the scope of the inquiry and as we have laid it down, and ask Mr. Parker if he can send any statement in writing to us to show that he is within that, then we will consider that.

(*Mr. Hume Williams.*) You would rather not hear him argue the question of his *locus standi*. You would rather have it in writing?

(*Chairman.*) I think so, in the first place. At present I do not see how he can have any *locus standi* at all here. Putting it in the broadest terms, what has he to do with the validity of the concession except that he is interested in it hereafter?

(*Mr. Hume Williams.*) Except he is, as we say, vitally interested in its duration.

(*Chairman.*) Many people are very much interested in concessions. You could get every employé in a railway who would have an interest to come forward. It is a question of degree. You might have a very large interest in concessions, but unless people come forward as witnesses to say: "Under one of these heads we say this concession is valid or invalid, or it is contrary to the Convention," and the like, I do not see they have any right to be heard at all here. It would allow an indefinite number of people to come here and air their views.

(*Mr. Hume Williams.*) That, of course, you would not tolerate.

(*Chairman.*) Just see what the Attorney-General's position is. He has an interest in a legacy of Toleman's.

(*Mr. Hume Williams.*) Yes.

(*Chairman.*) That is a very long way off this concession.

(*Mr. Hume Williams.*) I submit not because the executors of Toleman having got those substantial judgments against Winby, and being mortgagees of his as well their only security practically for that £90,000 beyond the rolling stock that they have had, is the continuance of Winby's contract and his claim against the company. Supposing, if I might presume such a thing for a moment, that you were to report something which

would annul the concession for the future, and Mr. Winby was to bring his action against the company, as you said the other day, for specific performance of the work, the company would not unnaturally answer: "We cannot allow you to complete a contract with regard to which the concession has gone. How can we allow you to construct a railway in respect of which the concession is gone?" Where would our right of action be? It may be a good cause of action or a bad one, but it shows our interest in it.

(*Chairman.*) Nobody disputes you are interested in it at all; but the argument you have just put to us really would cover anybody who had some pecuniary interest in a concession: that is to say, if there was a railway company, or a water company, there are many persons who are interested in its maintenance, and they would have a right to come here and make separate speeches on the matter.

(*Mr. Ashmore.*) And why not Mr. Winby's sub-contractors?

(*Chairman.*) I think we went beyond what we need have done in even hearing the outline of Mr. Winby's case.

(*Mr. Hume Williams.*) I will take the intimation you have given me, and I will communicate with Mr. Parker, and he will lay a statement before you as to what *locus standi* he may have.

(*Mr. Winby.*) Would you allow me to correct a statement that I made? I said July, 1895. It was July, 1894.

(*Chairman.*) In July, 1894, you were stopped.

(*Mr. Winby.*) Yes.

(*Chairman.*) What action did you take as far as the company were concerned when you were stopped? Did you communicate with the company or not?

(*Mr. Winby.*) I continually communicated with the company.

(*Chairman.*) You continually communicated?

(*Mr. Winby.*) Yes.

(*Chairman.*) What was the general nature of your communications?

(*Mr. Winby.*) Constantly asking whether we were to go on; and also asking for orders, and for them to send us approved plans in order that we might go on. We were told again and again that we should go on, and our instructions were as to how far we should survey the line; but beyond the construction up to the 119th kilometre we could not go on any further.

(*Chairman.*) You did not litigate the matter?

(*Mr. Winby.*) No.

(*Chairman.*) Did you make any complaint to the company?

(*Mr. Winby.*) Constantly.

(*Chairman.*) And immediately on being stopped?

(*Mr. Winby.*) Immediately and continuously afterwards.

(*Chairman.*) That was with the representative of the company in Africa?

(*Mr. Winby.*) That was with the representative of the company in Africa, and also with the representative of the company in Paris and here.

(*Chairman.*) Do you say that the company both in Paris and in South Africa were fully informed of the difficulties that you were encountering in June and July, 1894?

(*Mr. Winby.*) Thoroughly and fully, both by letter and personally.

(*Chairman.*) Have you copies of the correspondence which took place then?

(*Mr. Winby.*) Yes, we have.

(*Chairman.*) I think we ought to have that—I do not say the whole of the correspondence, but if you have got letters to show that you constantly and fully advised the company both in Paris and in South Africa as to the position in June and July and onwards, I should like to have those letters.

(*Mr. Winby.*) Yes. I should like to explain to you that while I said that July, 1894, was the time at which we were stopped from want of plans to proceed with the work, we had at that time materials on the water and coming over, which of course would come after that time, so we were stopped as far as earthworks and things, but we were not stopped as to sending materials forward; and that is the reason why we had such a very large amount of materials there, because we expected this was only a temporary stoppage, and that is the reason why we had such a very large staff of agents, engineers and men on our hands, whom we could not get rid of for a very long time.

Mr. G. H. C. Lea. 14 Dec. 1900.

(*Mr. Ashmore.*) You were prevented in July, 1894, from proceeding further than the 119th kilometre?

(*Mr. Winby.*) Yes.

(*Mr. Ashmore.*) But on the line between the beginning of the 119th kilometre, you continued working more or less up to what time?

(*Mr. Winby.*) I should say it would certainly be beyond this time, two or three months, but I cannot tell you exactly from memory. I can get that information for you.

(*Mr. Hume Williams.*) It must have been after the last issue, because out of that large advances were made.

(*Mr. Winby.*) We naturally went on as far as we possibly could do.

(*Chairman.*) You would use all the materials that were in transit when you stopped in 1894?

(*Mr. Winby.*) That we did not do. We had enough material that would go up to the 129th kilometre; but we had some 50 miles of rails.

(*Mr. Loveday.*) You completed the sections that had been passed?

(*Mr. Winby.*) We completed the sections that had been passed and no more. We could not go further.

(*Chairman.*) The date of the completion of the last you cannot give us now; you will supply us with any correspondence that passed between you and the company?

(*Mr. Winby.*) Yes.

(*Mr. Hume Williams.*) You have the contract between this gentleman and the company providing that he shall ship independent of engineers' certificates; and he has to receive payment independent of engineers' certificates.

(*Chairman.*) I do not think we can go into that.

(*Mr. Hume Williams.*) Only with reference to what we allege to have been the existing Trust when the second issue was deposited in the joint names of the president of the company and Van Blokland. Our claim against the Government is that this issue could not be made without the consent of the contractor—this second issue.

(*Chairman.*) The debentures?

(*Mr. Hume Williams.*) Yes, the debentures. He only gave his consent on the terms that the proceeds should be put in the joint names of the president of the company and Van Blokland, and that out of that advances were to be made to him, which was, in fact, done to the extent, I think, of nearly £200,000; and, of course, our allegation is that that was a Trust which the representative of the Transvaal Government had accepted, and that, presuming we could prove that he had wrongfully refused in the future the payments to be made, that gives us a cause of action, and with reference to that it is material to know that the contract between this gentleman and the company did not provide what is ordinarily the case in a railway contract, namely, that he should be paid only on the engineer's certificate for the value of the work done, but it provided generally it was to be paid out of the various issues to be made, and the issues could not be made without his consent, because it was that that enabled him to impose the terms of this money being deposited in the joint names. That is the only reason on which that could have any materiality, if you think fit to have it.

(*Chairman.*) I do not think so. You will have full liberty hereafter with regard to that.

(*Mr. Evan-Thomas.*) May I just say, sir, that the last payment under the authority of the Minister to Messrs. Westwood and Winby was on the 20th February, 1895, and that between August, 1894, the time mentioned by Mr. Winby, and the end of December they received £341,181 advances. It is all set out in my case here.

(*Mr. Hume Williams.*) Out of that?

(*Mr. Evan-Thomas.*) Out of that fund. The figures are all set out here.

Mr. H. C. Lea.
14 Dec. 1900.

(*Mr. Hume Williams.*) That is on the lines of the arrangement.

(*Mr. Evan-Thomas.*) I only mentioned it with regard to the date. There were enormous payments to Messrs. Westwood and Winby between August, 1894 and 20th February, 1895.

(*Chairman.*) I only asked this question of Mr. Winby with regard to the dates. I understand you to accept what he says with regard to his complaints to the company.

(*Mr. Evan-Thomas.*) I could not accept it.

(*Mr. Hume Williams.*) I presume, sir, as you have not asked Mr. Winby anything on the subject, you are satisfied of his innocence with reference to any contract made by the Oppenheims as to what I may call the division of the plunder.

(*Chairman.*) We have not gone into that at all.

(*Mr. Hume Williams.*) We are prepared to tender evidence if you think fit upon that.

(*Chairman.*) Is anybody else present who wishes to be heard to-day?

(*There was no response.*)

TWENTIETH DAY.

ALBANY BUILDINGS, 47, VICTORIA STREET, WESTMINSTER

Wednesday, 30th January, 1901.

PRESENT:

The Hon. ALFRED LYTTELTON, K.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. Mr. R. K. LOVEDAY,

Mr. BERNARD HOLLAND, *Secretary.*

SELATI RAILWAY CONCESSION (Continued).

(*Chairman.*) I understand, Mr. Thomas, that you wish to add something to what you said on the last occasion?

(*Mr. Evan Thomas.*) Yes

Mr. EVAN THOMAS, recalled; and Examined.

Mr. Evan Thomas
30 Jan. 1901.

(*Witness.*) In the first place, on behalf of the shareholders, there is one point I wanted to draw attention to, and that is, a letter of the 4th August, which appears on page 36 of the 18th Day. A telegram is set out in that letter which is a letter from Baron Oppenheim to Beelaerts von Blokland, "Also that guarantee be given to repay the sums unduly placed to the debit of the Government." That was a mistake that was made by the Local Board in cabling. I have here the press copy of the original cable that Dr. Leyds sent to Beelaerts von Blokland, and the right word is "company." It should read "placed to the debit of the company."

3846. (*Mr. Ashmore.*) I think we have the correct word in the original documents sent to us by Mr. Henderson?—Yes, but I thought as there was a contradiction between the two, you might think this was the official and the other was the mistake. Of course, that has a very important bearing on the question of the company being in the guarantee, because as it was to repay to itself, it is quite clear that the company could not undertake to repay anything to itself.

3847. The original words of that were in French?—Do you mean of the letter or the telegram?

3848. The letter?—The letter was in French, but the original telegram from the State Secretary to Von Blokland was in Dutch.

3849. The telegram quotes the words contained in the letter of the Secretary of State to the Local Board. The letter of the Secretary of State to the Local Board was in French?—No, in Dutch, but the Local Board sending their own telegram to Paris put the word "Government" instead of "Company." They corrected it four days afterwards, but it was too late. It was after it had gone in. I will have a copy of that made for you. Now, on the 1st Day you asked me a great number of questions, and, of course, at that time I had not been able to go into the particulars of the sale of shares. I should like now, if you will allow me, first to rectify several points in that evidence of mine. I propose, if you have no objection, to ask very shortly a few questions of Mr. Lea and Mr. Stephenson, who are independent. It would be more satisfactory to me if you will allow it. Mr. Lea is the solicitor to the certificate holders. I should also like to ask Mr. Ogle a few questions, he being a Director of the mercantile company.

Mr. HENRY GOODWYN STEPHENSON, called; and Examined.

Mr. H. G. Stephenson.

3850. (*Mr. Evan Thomas.*) Perhaps I may be allowed to read my questions. You were acting for the Trustees at the time of the sale of the shares?—Yes, my firm were.

3851. You knew one of the Trustees, Sir Alec Wilson, agreed to act at my request?—That is so.

3852. And that I was exceedingly anxious that both his interests and those of everyone who might buy the shares should be properly cared for?—Yes, I think you were.

3853. Did we take great trouble for some weeks in getting the papers and the concession in order?—Yes.

(*Chairman.*) I am afraid these questions are rather too leading in form. Try and put them so that Mr. Stephenson can give his own account of the matter.

(*Witness.*) I was acting for the Trustees when this issue was made or when the shares were sold, and I went most carefully into this matter. I should say I was certainly three weeks or a month going into all the details, and if there was anything that struck me or occurred to me, I used to ask Mr. Evan Thomas to get me any documents which I thought were necessary or anything I wished for that occurred to me. Mr. Evan Thomas used to give me whatever I asked for. On one or two occasions I saw Baron Oppenheim, and I saw Mr. Warnant, and I saw the secretary of the company, and I asked them certain questions, particularly in regard to the shares. I got all the information that I could get, and, as far as the information I got went, it explained the different points that had occurred to me. Now, sir, in

regard to the documents that were shown to me, I saw no letters of any sort or kind or any correspondence nor was I aware of the existence of any correspondence whatever between the Government and the company, or between the Government and anybody, impeaching or in any way disputing the Warnant contract for the construction of the railway after the date of the 14th June and the 1st of August. If you remember the 14th June was when there was a correspondence. I think it was the 14th, but I forget the exact date. It was in June.

3854. (*Mr. Ashmore.*) 1894?—Yes. The last date was either the 1st, 2nd, or 3rd August. I know it was the beginning of August when the issue of the debentures was considered, and a telegram was sent which I treated as being a settlement all round as between the Government and the company.

3855. (*Chairman.*) What telegram do you refer to?—I think the telegram was sent from Pretoria. I think it was the 1st of August, speaking from memory; I know it was early in August. It was the question of the issue of the debentures.

3856. Between the 14th June and the 1st of August you were aware of that correspondence?—I was quite aware of that.

3857. That raised in a perfectly plain form the controversy which existed between the Transvaal Government and the Oppenheims?—That is so.

3858. What is the telegram, and what are its terms which you regarded as having settled that matter?—I think you have the telegram in evidence. It was a telegram in August authorising the issue of the debentures. If you look at the letters you will see the condition was put that, "unless this question be settled definitely now in regard to the Warnant contract, we will not proceed with an issue or the construction of the railway." Following on that came the telegram, "Issue the debentures," and some other terms which you will find in the telegram, which I cannot remember. I saw a copy of the resolution of the executive committee dated 31st July, in which you will see it says the Executive Council, after taking into consideration the correspondence carried on and the opinion of the Government Commissioner, resolved to direct the Secretary of State to send the following telegram to the Minister, Mr. Beelaerts von Blokland. This is the telegram: "You may sanction Selati obligations issue £1,000,000, minimum 86 net on condition (1) The concession modified as written to local board." Those were some modifications in favour of the Government which they wished made in the concession. "(2) That guarantee be given that all sums which cannot be reasonably raised against the company should be refunded. (3) That proceeds paid in the name of yourself and trustee of the company." From that date down to January or February* I never heard of any dispute or any question being raised in regard to this Warnant contract. As far as I was aware the matter was closed then, and it is inconceivable, or at least it was from my point of view, that nothing should have taken place of any sort or kind between August 1st and February on the question of the contract if it was still an unsettled matter. That is exactly the position that I took at that time, and I venture to think it was not a very unreasonable one. In addition I would point out that my attention was called to the fact that on the 27th June the dividend was paid by the Government to the company. I think it was the 27th June, but at any rate it was subsequent to the correspondence.

3859. (*Mr. Ashmore.*) It was not subsequent to the 1st of August?—No; but it was subsequent to the letters of the 14th June.

3860. But not subsequent to this telegram?—I look upon the telegram as the result and the outcome of what passed between the parties. That is all I had, and that is all I could go upon.

3861. (*Chairman.*) Do you mean to say you did not see any of the letters or hear of any of the negotiations though you were in communication daily?—None since those dates.

3862. But before? You saw this telegram on the 31st July?—Yes; and the previous correspondence.

3863. You saw all the previous correspondence?—Yes, certainly I did, up to the 14th June, 1894.

3864. Then I misunderstood you. I thought you said you had not seen it?—No; I saw all the correspondence. I want to draw your attention to what carried great weight in my mind. It says, "The Executive Council, after taking into consideration the correspondence and the opinion of the Government Commissioner." That correspondence did raise the question in most explicit terms, and it is recited in this resolution. I do not know that I need add anything to that. All I want to point out is, that as far as I know, and so far as I believed, that matter was settled at that date on those terms as between the Government and the company. I was not aware then of, and I never saw at that time, any letters or correspondence impeaching this contract subsequent to that date.

3865. (*Mr. Ashmore.*) What did you understand by the second of those two conditions?—"A guarantee be given that all sums which cannot be reasonably raised against the company should be refunded.' I gathered from that that the Government had come to an arrangement with the promoters that any question of accounts—and there were some questions of payments and bribes, and so on—should be closed and settled up or a guarantee given. That was an arrangement between the Government and the promoters themselves. I see here they say, after reading the correspondence, "Very well. Now you may proceed with this matter, provided the promoters give a guarantee that all sums which could not be reasonably raised against the Company should be refunded." That is the only intelligible view which could be taken of it.

3866. With regard to "sums which cannot be reasonably raised against the company," it seems to me there are two subjects of controversy. One was with regard to a sum of about £20,000 or something of that kind?—Yes.

3867. Which Oppenheim took credit in his accounts for having paid in the Transvaal?—Yes.

3868. And the other sum was the £400,000?—Yes.

3869. Did you take any measures or make any endeavour to ascertain whether anything resembling a guarantee for the payment of £420,000 had been made?—No, I did not take this to mean the £420,000.

3870. Did you take it to mean the £20,000?—Yes.

3871. Was that money refunded to the company?—I believe it was.

3872. (*Mr. Evan Thomas.*) It was agreed to be, I believe?—I could not tell at that time.

3873. (*Mr. Ashmore.*) You did not, in fact, take any measures to ascertain whether that money had been refunded or not?—I did not know what the sum was. All I had to look at was to see that as far as the legal position was concerned this concession was in order. The question of an arrangement between the board and these gentlemen with regard to a sum of £20,000 is a question of liability. It would not touch the concession. I could not and would not go into the question of the accounts between the Government and the promoters.

3874. Considering the question involved might possibly even within, I suppose, your view have included the £400,000, was it not within the line of your duty to ascertain whether it did include that £400,000 or not?—I think I did ascertain. I asked whether any question had ever been raised, and whether any correspondence had taken place further on the subject of this contract, and I was told there was none, and I have not been shown any. I have since, but I was not shown any at the time in any shape or form. I did not consider that that applied to the £400,000. I thought the question of the contract had been settled on the terms of certain modifications in the concession, and that sum of £20,000, or whatever it was, was to be discharged by the promoters.

3875. Between the date of the telegram and the date of the issue of the shares there was a period of something like eight months?—Yes.

3876. In which it would have been possible to clear up any doubt which might have arisen in your mind in the matter?—A doubt did not arise in my mind, because here I was in the month of February, and I had the assurance that no question of any kind had been raised of the Warnant contract.

3877. (*Chairman.*) From whom did you have that assurance?—From Henri Warnant. I also asked Mr. Prodhomme, and I also asked Baron Oppenheim. I was shown a report of the Commissioner, Mr. Smit. This is a report of the Commissioner of Railways, which was shown to me at that time, and there is my handwriting upon it at that period.

* Witness subsequently desired to correct this by saying, "Down to some period after February, 1895."

Mr. H. G. Stephenson.

30 Jan. 1901.

(*Chairman.*) It is dated 24th July, 1894.

3878. (*Mr. Evan Thomas.*) I think it was presented to the Volksraad on the 26th July, 1894?—(*Mr. Stephenson.*) The minute says: "After taking into consideration the correspondence and the opinion of the Government Commissioner." I presume the "opinion" meant the report of the Government Commissioner. That is the report that was shown to me—that very document. (*The report was produced and put in.*) That was the report that was given to us.

3879. (*Chairman.*) You see the first condition there and the third condition: "You may sanction Selati obligation issue 1,000,000, 86 net on condition." Then there are three conditions to be fulfilled. The first condition is that the concession should be modified as written to local board?—Yes, that was done.

3880. What was the modification upon which this issue was conditional?—There were various modifications in the terms of the concession which were made, and which I think are shown in red ink.

3881. You say that was the first condition. What step did you take to see that that had been carried out?—I asked to see the concession, and I was shown the modification

3882. Were you shown the letter written to the local board?—Which letter?

3883. The letter or communication which is here referred to, namely, that the concession was modified as written to local board?—Certainly. It is in the previous correspondence of June.

3884. You satisfied yourself that that modification had been made in the concession?—Yes, I think there were various modifications.

3885. That is the first condition. You had told Mr. Ashmore what you thought the second condition implied?—Yes.

3886. What steps did you take to see that that had been fulfilled?—I cannot say that I took steps to see that it had been fulfilled, but I was told that this matter had been settled as between the Oppenheims and the Government.

3887. Did Mr. Thomas tell you that, or did Baron Oppenheim tell you that, or who?—Both Warnant and Oppenheim told me that that matter had been settled. I asked Mr. Prodhomme also. I asked if there was any correspondence or documents since then. Nothing had been raised as far as I was informed, and as far as I can see from that date to this, I have seen nothing. I saw that on the 27th of June the dividend was paid, and I never heard of any other question raised about that contract. I could not put it stronger than that. It is not an unreasonable view, is it, sir?

3888. I am going to ask you as to that. Take the third condition. I am stating now what I understand it to mean, and you will correct me if I am wrong. It says that proceeds of the debenture issue be paid in the name of "yourself." Who is "yourself" there?—Beelaerts von Blokland.

3889. That is the representative of the Transvaal Government?—Yes

3890. "And the trustee of the company"?—Yes.

3891. That is to say that the condition of the issue was that the proceeds should be put to a joint account?—Yes.

3892. Did that convey to your mind that matters had been entirely adjusted?—Yes, I think so. I think putting the funds into a joint account was a very wise precaution to have adopted.

3893. Did it indicate to your mind (because it is an unusual course) that questions had been adjusted, or did it not rather indicate to your mind that security had to be taken that the issue of those debentures as between the company and the Government should be properly applied?—No. I thought it was a question as between the Oppenheims and the Government that they wished to have it put in the joint names.

3894. The Oppenheims were representing the company, they were the only directors of the company at that time?—Clearly. The correspondence showed there had been questions—I mean the correspondence of June, and I think this was a reasonable and not unnatural safeguard to prevent any wrong debits or wrong payments so that the Government Commissioner or Ambassador should be able to see how the moneys were applied, and that was done. It was put in the joint names.

3895. No doubt, and, of course, it is not right to read the subsequent events into it?—No.

3896. You were acting at the time, of course?—Certainly.

3897. But with the knowledge you have now, you would have regarded this proviso, that the proceeds should be paid into joint account, as indicating that the matter had been entirely adjusted on a satisfactory and amicable footing?—I looked at it merely as an ordinary and very reasonable precaution. I had nothing to do with the debenture issue, but I was impressed with the fact that the gentlemen who issued the debentures were satisfied. They would never have issued the debentures to the public unless they were. I merely looked upon it as a precaution, and a very natural one I thought.

(*Mr. Evan Thomas.*) May I remark upon that, that the issue was much larger than the concession allowed, and the Government naturally did not want the company to have the sole control of all this money before they had earned it. That was the real explanation, I think. With regard to this report I should like to make a remark. I meant to bring this out in asking Mr. Stephenson questions, because it is a very important matter. We asked for Mr. Smit's report to the Volksraad, and this was given to us. You will see that it is certified a true copy.

(*Chairman.*) But there is no date upon it, except one that has been written afterwards.

(*Mr. Evan Thomas.*) It is the 26th July. You will find it is dated the 24th July, and it was presented on the 26th.

(*Chairman.*) We can verify that afterwards.

(*Mr. Evan Thomas.*) You can take it that that is correct.

(*Chairman.*) What point do you raise on this?

(*Mr. Evan Thomas.*) There is the translation of the report as Mr. Smit presented it to the Volksraad (*handing document*). You will notice two significant things. You will notice the red ink. There are two alterations and the two alterations are the allusions made by Mr. Smit, which he really did make, to the dispute. The copy given to us as a certified copy of his report, contains no mention whatever of any objection on his part to the Warnant contract or to the financial administration of the company. You can take it that all the black is correct. That was Mr. Smit's report to the Volksraad upon the Selati Railway for the year 1893, presented by him on the 26th July, 1894.

(*Witness.*) That is referred to in the resolution of the Executive Council.

3898. (*Chairman.*) That we have just been dealing with?—Yes. I attach great importance to that, or, rather, I did.

(*Mr. Evan Thomas.*) It contained no objections whatever, or allusions showing that the Government had any objection to the Louis Warnant contract, nor did he make any criticism on the financial administration or otherwise of the company. Now, in fact, he did.

(*Chairman.*) Where does this translation come from?

(*Mr. Evan Thomas.*) That translation was found after the last meeting. Mr. brother, who is here, was looking for some papers you require, and he found this translation from the Volkstem among a bundle of papers we received from Paris. It was compared with our documents which we had at the time of the sale of the shares, and at the time of the Chancery proceedings, and it was found that all this was left out. I wrote at once to Baron Oppenheim, and said we had discovered that, and that I was going to put it before the Commissioners, and if he had any explanation to make, if he would send it to me, when the time came, I would put it before them. I have here his letter, which I will also put in.

(*Chairman.*) When did you receive this certified copy?

(*Mr. Evan Thomas.*) At the end of 1894.

(*Chairman.*) From whom?

(*Mr. Evan Thomas.*) Baron Oppenheim, it being one of the documents I required.

(*Chairman.*) This French copy, translated from the Dutch, and purporting to be the Railway Commissioner's report, was sent to you at the end of 1894?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) It was given to you.

(*Mr. Evan Thomas.*) Yes.

(*Witness.*) No, it was not at the end of 1894. I said, first of all, I wanted to see this correspondence, and I saw that document.

(*Chairman.*) What we want to get is the date.

(*Mr. Evan Thomas.*) It was either December, 1894, or January, 1895, previous to the sale of the shares.

(*Chairman.*) This French document was received from Oppenheim some time at the end of 1894 or the beginning of 1895?

(*Mr. Evan Thomas.*) Yes, previous to the sale of the shares.

(*Chairman.*) And this French document as received from him contained no serious criticism on the Warnant contract?

(*Mr. Evan Thomas.*) None whatever; no mention of it.

(*Chairman.*) Since the last meeting you have found a document.

(*Mr. Evan Thomas.*) A translation of the report taken from the Volkstem of the 8th August, 1894. This sets out Mr. Smit's report.

3899. (*Chairman.*) And this paper you have handed in to me is a translation of the report as you say and believe it was truly presented by Mr. Smit to the Volksraad?—Yes. Mr. Duxbury noticed at once that it was not right, as we sent out our copy with an English translation to Mr. Henderson, and Mr. Duxbury pointed out at that time that it was not correct. He did not at that time attach any importance to it.

(*Chairman.*) "By the correspondence and the interviews with the directors here"—then this is the new piece—"and from a contract concluded by them"; then it goes on, "it has been proved to me that the amount granted by the concession of £1,500,000 of debentures, of which £500,000 have been issued and £500,000 is share capital, will not be sufficient for the completion of the line." What is the meaning of "and from a contract concluded by them"?

(*Mr. Evan Thomas.*) That is the Louis Warnant contract. That is the only mention up to this time in his report of the Louis Warnant contract. He mentions it again at the end of the next paragraph, which was also left out.

(*Chairman.*) I do not see how that could be so "and from a contract." It would not appear from the contract with Warnant that the capital was inadequate.

(*Mr. Evan Thomas.*) Yes; because the £400,000 had gone to somebody, instead of going for the construction of the line. That is Mr. Smit's contention.

(*Chairman.*) I see what you mean. It might mean that.

(*Mr. Evan Thomas.*) It might, but it does not follow that it does.

(*Chairman.*) Now it goes on, "The company has therefore, under the terms of the concession, asked for a further future emission of 1,000,000 debentures. Nevertheless, according to a technical man in Europe appointed by our Government"—that is Westerman, of course?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) "Whose report has been deposited in our office, and in consequence of minute investigations made by me, it is evident to me that the financial administration of the company leaves much to be desired, and the result of my research is such that I could not recommend any new issue or new engagement on the part of the Government without having examined the modifications to be made, not only in the concession, but also in the contracts entered into by the company and in the financial management in the sense set forth in my letter of 4th May, 1894. R.C.M. 31/94. Minute R. 75 98/92." This in point of fact was taken from the Volkstem, but you believe that to be the original report made by Smit to the Volksraad.

(*Mr. Evan Thomas.*) Yes.

(The following documents purporting to be reports presented by Mr. Smit to the Volksraad were handed in, and are as follows:)

TRANSLATION.

EXTRACT from the Railway Commissioners' Report for the Year 1893 presented to the First Volksraad during its Session in 1894.

A.

As supplied by Baron Robert Oppenheim to Mr. Evan Thomas.

(Traduit du hollandais.)

DIVISION II.

Ligne du Chemin de fer Komatie-Poort-Leydsdorp, Ligne d'embranchement.

Suivant le rapport de l'ingénieur en chef de la Société du chemin de fer de Selati, j'ai l'honneur de vous communiquer ce qui suit au sujet des travaux de cette société.

En novembre 1892 on a commencé les arpentages à partir de Komati-poort, mais par différentes circonstances, entre autres par de maladies du personnel, de fortes pluies, etc., on était avancé seulement en fin mai 1893 à la ligne de 41 km. Depuis lors on a pu faire de plus forts progrès et la ligne a été avancée en septembre à 84 km. (52½ lieues). En avril 1894 on était avancé à 145 km. pour l'arpentage et la ligne a été avancée à 119 km. (74⅛ lieues). Les plans de cette partie ont déjà été approuvés par moi.

Les travaux des fondements, à l'exception de ceux nécessaires pour la gare commune Komatipoort, ont été achevés entièrement en octobre 1893 jusqu'à la rivière Sabi, soit 81 km., ou 50⅜ lieues.

Les travaux provisoires pour la construction du pont de la rivière Krokodil ont été commencés. Pour les deux têtes et tous les piliers de ce pont on a trouvé une bonne et saine roche pour les fondements. Par suite des pluies qui sont intervenues on a dû cesser les travaux au commencement de l'été. On commencera bientôt la construction du pont définitif.

B.

Actual Report as printed in the Staats Courant.

(Translation from the Dutch.)

DIVISION II.

Branch line of the Komatipoort-Leydsdorp Railway.

According to the report of the chief engineer of the Selati Railway Company, I have the honour to make you the following communication on the subject of the works of that Company.

In November 1892 the surveys were begun from Komatipoort, but owing to various circumstances, amongst others, sickness of the staff, heavy rains, &c., they had only done up to the end of May, 1893, 41 kilometres of the line. Since then it has been possible to make greater progress and the line had advanced in September to 84 kilometres (52½ miles). In April, 1894, the surveys had reached 145 kilometres and the line 119 kilometres (74⅛ miles). The plans of this portion have already been approved by me.

The earthworks, with the exception of those necessary for the General Station at Komatipoort, were entirely finished in October, 1893, as far as the river Sabi, 81 kilometres or 50⅜ miles.

The preliminary works for the construction of the bridge over the Crocodile river have been begun. For the two abutments and all the pillars of this bridge, good and sound rock has been found for foundations. On account of the early rains which have occurred, the work had to be stopped at the beginning of the summer, and a temporary bridge constructed, which stood during the whole summer. The construction of the bridge itself will soon be begun.

Mr. H. G. Stephenson.
30 Jan. 1901.

Les petits travaux d'art—vannes, égouts et tuyaux—sont achevés à 32 km. (20 lieues). On a pris aussi les mesures provisoires pour pouvoir commencer bientôt la construction du pont du Sabi, de sorte que s'il ne se présente pas de cas imprévus, les fondements des premiers grands ponts seront prêts.

The minor works (culverts, drains and pipes) are finished to 32 kilometres—20 miles. The necessary steps have also been taken to enable the construction of the bridge over the Sabi river to be begun soon, so that unless something unforeseen occurs, the foundations of the first great bridges will be ready before the commencement of the coming rainy season.

On a posé les rails avec rapidité et le mars 1894 on est arrivé à 81,200 km. (50¾ lieues).

The rails were laid with rapidity, and by the 17th March 1894, they had reached 81,200 kilometres (50¾ miles).

La ligne télégraphique est avancée à 75 km., environ, 47 lieues.

The telegraphic line had advanced to 75 kilometres—about 47 miles.

La Compagnie a une quantité de matériel sur sa ligne dont cependant la valeur ne m'a pas été indiquée. Suivant information de la Cie il est arrivé dans le courant de juin 5,000 tonnes de matériel de chemin de fer pour sa ligne Lorenço-Marques.

The company has a quantity of material on its line, of the value of which, however, I have not been informed. According to information received from the company, 5,000 tons of railway material arrived during June at Lorenzo Marques for the line.

A Komati-poort et le long de la ligne on a construit divers bâtiments pour habitations du personnel, bureaux, hôpital, magasins, ateliers, etc., dont la valeur a été évaluée à £10,000.

At Komatipoort, and along the line, various buildings have been constructed for dwelling-houses of the employés, offices, hospital, storehouses, workshops, &c., of an estimated value of 10,000*l.*

Au sujet des travaux exécutés, il faut cependant remarquer que la Cie a été beaucoup retardée par les maladies, les pluies, et autres accidents.

As regards the work done, I should remark that the company has been much retarded by illnesses, rains and other drawbacks.

Depuis le commencement des travaux jusqu'à présent, ainsi en moins de 1½ an., il y a eu des décès du personnel des entrepreneurs (y compris les sous-contractants) en tout 14 personnes et plusieurs autres ont dû quitter les travaux et retourner en Europe pour cause de santé.

Since the work started and up to the present time viz., less than a year and a half, there have occurred among the employes of the Contractors (including the sub-Contractors) fourteen deaths in all, and several others have had to leave the works and return to Europe through ill-health.

De même que pour la Cie de chemin de fer Néerlandaise de l'Afrique méridionale, le transport a éprouvé beaucoup de difficultés par la présence des mouches.

As in the case of the Netherlands Railway much difficulty has been experienced owing to the presence of the tsetse fly.

Suivant le rapport que j'ai reçu de la Direction locale de la Cie, la situation financière de la Cie était comme suit le 31 décembre 1893 :—

According to the report I have received from the Local Board of the Company, the financial position was as follows on December 31st, 1893 :—

A.

BILAN de la Cie Franco-Belge du Chemin de Fer du Nord de la R.S.A. le 31 Décembre, 1893—1ère année de service, 1892-3.

	£ s. d.	£ s. d.
Capital	——	500,000 – –
Obligations	——	500,000 – –
Différence du cours par l'emprunt des fonds	150,000 – –	——
Concession	10,000 – –	——
Capital de garantie	20,000 – –	——
Compte de construction	609,999 19 11½	——
Frais de fondation	32,881 13 3	——
Compte d'administrat	9,207 16 3½	——
Bureau principal, Paris	463 11 2½	——
Conseil local, Prétoria	——	122 11 5½
Bureau Londres	——	150 – –
Commission différence de cours et comptes d'int.	——	5,248 – 7½
Gouvernment de la R.S.A.	41,781 3 –½	——
Ameublement	204 11 6	——
Parti-dividendes	——	27,262 2 3
Caisse	77 14 2	——
Divers débiteurs	158,168 17 3	——
Divers créanciers	——	2 12 4
	1,032,785 6 8	1,032,785 6 8

B.

BALANCE SHEET of the French-Belgian Company of the Northern Railway of S.A.R. to the 31st December, 1893. (The first financial year 1892–3.)

Mr. H. G. Stephenson.
BBEA
30 Jan. 1901.

	£ s. d.	£ s. d.
Capital	— —	500,000 — —
Debentures	—	500,000 —
Difference in price of issue of loan	150,000 — —	—
Concession	10,000 — —	—
Caution money	20,000 — —	—
Construction account	609,999 19 11½	—
Formation expenses	32,881 13 3	—
Administrative expenses	9,207 16 3½	—
Head Office, Paris	463 11 2½	—
Local Board, Pretoria	—	122 11 5½
London Office	—	150 — —
Commission, difference in exchange and interest	—	5,248 — 7½
Government of S.A.R.	41,781 3 —½	—
Furniture	204 11 6	—
Share dividends	—	27,262 2 3
Cash	77 14 2	—
Sundry debtors	158,168 17 3	—
Sundry creditors	—	2 12 4
	1,032,785 6 8	1,032,785 6 8

A.

Pour plus d'explication de l'article Gouvernement de la République Sud-Africaine, je fais suivre ci-après un état indiquant les sommes faisant le détail de cet article.

B.

In explanation of the item "Government of the S.A.R.," I give below a statement showing the items.

A.

GOUVERNEMENT DE LA RÉPUBLIQUE SUD-AFRICAINE, 1893.

	Frs.	Frs.
Avril —Commission, différence du cours et intérêts. Intérêts de 6 mois au 18 mars 1893 à 3 per cent. sur 500,000—déposés comme garantie		7,500.00
Nov. 1.—Intérêts du 2ème semestre de do. do.		7,500.00
Déc. 31.—Intérêts du 18 sept. 31 déc. 1893 sur do. do.		4,375.00
Déc. 31.—Acompte de coupons d'oblig. :		
Paiement du coupon échu le 30 juin	92,187.50	
le 31 déc.	250,000.00	
		342,187.50
Déc. 31.—À commission, différence de cours et d'intérêts :		
Intérêts à 3 per cent. sur fr. 92,187.53 avancés par la Cie. pour paiement du coupon échu le 1er juillet 1893, pour oblig.		1,413.52
Dec. 31.—À Actions Cpte. divid. Div. 1ère année de service—1892–3—échu ce jour		681,552.77
		1,044,528.79

	Frs.	Frs.
April 1.—To Commission discount on loans and interest. Half year's interest to 18th March 1893, at 3 per cent. on 500,000 frs. deposited as guarantee		7,500.00
Nov. 1.—Interest for 2nd 6 months do. do.		7,500.00
Dec. 31.—Interest from the 18th Sept. to the 31st December 1893 on do.		4,375.00
Dec. 31.—To Debenture Coupon Account :		
Dec. 31.—To payment of coupon due 30th June	92,187.50	
To payment of coupon due 31st Dec.	250,000.00	
		342,187.50
Dec. 31.—To Commission discount on loans, and Interest at the rate of 3 per cent. on Fcs. 92,187·50, advanced by the Company for payment of the coupon due on debentures, 1st July 1893		1.413.52
Dec. 31.—To share dividend account :		
Div. : 1st financial year (1892–3) at 4 per cent., due this day		681,552.77
		1,044,528.79

= £41,781 3*s.* 0½*d.*

Mr. H. G. Stephenson.

30 Jan. 1901.

A.

Dans le montant de £41,781 3*s.* -½*d.* est compris l'article Dividende fr. 681,552.77 ou £27,262 2*s.* 3*d.*

Cet article a été porté au crédit comme supposé être payé.

Par les correspondances et les entretiens avec les directeurs d'ici il m'a été prouvé que le montant accordé à la concession de £1,500,000 en obligations (dont £500,000 sont émises) et £500,000 capital d'actions, ne sera pas suffisant pour l'achèvement de la ligne.

La Cie a donc aussi dans les termes de la concession fait la demande d'une émission ultérieur de £1,000,000 d'obligations.

Certifié conforme.

BARON ROBERT OPPENHEIM.

B.

In the amount of £41,781 3*s.* -½*d.* is included the item for Share Dividend Frs.681,552.77 or £27,262 2*s.* 3*d.*

This item has been placed to the credit as though it had been paid.

By the correspondence and the interviews with the Directors here (and in accordance with a contract concluded by them), it appears to me that the amount granted by the Concession of £1,500,000 of debentures (of which £500,000 have been issued) and £500,000 Share capital will not be sufficient for the completion of the line.

The Company has therefore under the terms of the Concession, asked for a further future issue of £1,000,000 debentures, nevertheless according to a technical man in Europe appointed by our Government (whose report has been deposited in our office), and after a minute investigation made by me here, it is evident to me that the financial administration of the Company leaves much to be desired, and the result of my research was such that I could not recommend any new issue or new engagement on the part of the Government before radical modifications are made, not only in the Concession, but also in the contracts entered into by the Company and in the financial management, as suggested by me in my letter of 4th May, 1894, R. C. M. 37/94. (Minute R. 7598/92.)

(*Chairman.*) How does the Baron explain this?

(*Mr. Evan Thomas.*) I will hand you his letter (*produced*).

(*Chairman.*) I will read it:—"Paris. Dear Mr. Evan Thomas,—In reference to Mr. Smit's report of 1894, of which a copy certified by me has been communicated to you, I beg to confirm that all documents were sent to the company's office from Pretoria, and that as much as I can remember I think that this certified copy was made out of an extract of a daily newspaper. The proof of what I say could easily be obtained if the company had access to its documents in Brussels. What I want to impress on you is that neither for money nor for any other consideration I would ever have given my signature to a document which should not have been a genuine and exact copy of the one I had then in hand."

(*Mr. Stephenson.*) I see there is a pencil note of mine on that French translation, "What date to this?" That was a very material point to my mind, because that is the report that is recited in this minute. On the face of it there is no date, and I put, "What date to this?" and I was told, and I believe that is so, that that was the report that is referred to here in this minute.

(*Mr. Evan Thomas.*) I should wish to say that, of course, the Minister, Van Blokland, did not have that report. He had, of course, his proper official communication from Pretoria, and therefore, when he gave his certificate we have not alleged that Baron Oppenheim, or whoever altered that, deceived the Minister. It was for our consumption, to prevent our knowing that there was any question still going on.

(*Mr. Loveday.*) Then the report of the special Volksraad Commissioner who treated the report of the Railway Commission. You were never cognisant of that report?

(*Mr. Evan Thomas.*) Yes, we were.

(*Mr. Loveday.*) At the same time?

(*Mr. Evan Thomas.*) Some time about then, an abridged one of it.

(*Mr. Loveday.*) Because that report was presented on the 15th September, and there the whole is gone into, showing that Warnant has taken this £400,000. That is on the 15th September, 1894.

(*Mr. Evan Thomas.*) That, of course, in the light of present knowledge, is so; but at that time there was no statement by Mr. Smit or by anybody, and all we had got was, "Did the Government object?" "No, there was no objection on the part of the Government." There were statements made in the Commission's report about the 7 per cent., and so on, that were all equally incorrect, and on the basis of the Warnant contract having been settled. There was no more foundation for the remarks about the Warnant contract than there was for those about the 7 per cent.

(*Mr. Loveday.*) Yes; but this report sets out more or less all the transactions to which the Government objected.

(*Mr. Evan Thomas.*) Yes; but at the same time there is a debate upon it, and there is no statement from the Government. If we had known Mr. Smit objected to the contract in his report, or that he had made any objection, we should have at once asked, "What is the present position?"

(*Mr. Loveday.*) But then the whole of the objections raised by the Government are clearly set forth in this report, because they quote from time to time the whole position upon documents laid before them by the Government and the Railway Commissioner.

(*Mr. Evan Thomas.*) Yes; but then it was all settled, at least, as far as we had any information, the whole question of the Warnant contract was settled, and also we knew with regard to all the other questions therein mentioned raised by the Government, either there was nothing in them—for instance, like the 7 per cent.—or they had been settled—for instance, like the £100,000.

(*Mr. Loveday.*) Then the assurance given in the Raad, that action was proceeding in connection with all these matters, was merely throwing dust in the eyes of the Raad?

(*Mr. Evan Thomas.*) Yes, absolutely.

(*Mr. Loveday.*) That is the statement by the Railway Commissioner and by the Government?

(*Mr. Evan Thomas.*) I do not follow your last question.

(*Mr. Loveday.*) That is a statement by the Railway Commissioner and by the Government that action is proceeding in this very matter. You contend it was all settled?

(*Mr. Evan Thomas.*) Yes.

(*Mr. Loveday.*) And, therefore, the Raad was misled?

(*Mr. Evan Thomas.*) Yes, absolutely.

(*Mr. Loveday.*) And no action was proceeding?

(*Mr. Evan Thomas.*) That is absolutely so.

(*Chairman.*) Is that September?

(*Mr. Loveday.*) 15th September, 1894.

(*Chairman.*) Who were the local board in the Transvaal?

(*Mr. Evan Thomas.*) De Jongh, Johann Rissik, and Paul Marais.

(*Chairman.*) They must have known perfectly well of this report. They were all in Pretoria.

(*Mr. Evan Thomas.*) You mean Smit's report?

(*Chairman.*) This report on the 15th September.

(*Mr. Loveday.*) The special report to the Volksraad.

(*Mr. Evan Thomas.*) Undoubtedly, I should say.

(*Mr. Loveday.*) They, knowing this question was still proceeding and was in active controversy, withheld all knowledge from you.

(*Mr. Evan Thomas.*) Yes, if it was in active controversy. Our point is that it was not, because the Minis-

ter had authorised the debentures, and the whole matter was settled, so far as we knew.

(*Mr. Loveday.*) The Minister authorised the issue of debentures long before this report was treated in the Volksraad.

(*Mr. Evan Thomas.*) Yes, but then he had given his certificate after the debate. The certificate of the 14th December is that everything was in order, and that was given long after that date. Moreover, the Minister had been signing cheques. They had spent £300,000 on the works. There was not anything disturbing the surface of the water on this side, as far as we could tell, in any way or shape. The whole thing was as smooth as possible.

(*Chairman.*) I am taking it you were deceived by the apparently falsified document that Oppenheims had sent you as to the state of the controversy.

(*Mr. Evan Thomas.*) Yes. Of course, that would have put us on inquiry.

(*Chairman.*) I want to know how many people were involved in deceiving you?

(*Mr. Evan Thomas.*) Not the local board. From my personal knowledge I should say not the local board.

(*Chairman.*) After they knew on the 15th September that the controversy was proceeding—and it would appear that they must do so, because they must have seen that report—did they withhold all knowledge from you?

(*Mr. Evan Thomas.*) We had no communication whatever with the local board.

(*Chairman.*) None?

(*Mr. Evan Thomas.*) No, none. The local board were not really a board in the true sense. They reported to Paris, and now we know of a great number of letters they wrote, but everything was kept from us. Of course, the whole object was to keep it from us.

(*Mr. Ashmore.*) As a matter of fact, did you become cognisant of the Transvaal Raad's report?

(*Mr. Evan Thomas.*) Yes, we had that later, some months afterwards—not at the time.

(*Mr. Ashmore.*) About what time? Was it before the end of 1894?

(*Mr. Evan Thomas.*) I should think we had it about January, 1895.

(*Mr. Ashmore.*) That raises in a very clear form to you the fact that the Legislative Assembly of the Transvaal took the most strong exception to this payment.

(*Mr. Evan Thomas.*) I think you will see they end all by the resolution of the Raad, which practically leaves it in the hands of the Government.

(*Mr. Ashmore.*) Leaving it to the Government to take steps in the matter?

(*Mr. Evan Thomas.*) And to act accordingly, leaving it entirely to the Government, the Government having settled everything. It was impossible that the Government could go one road and the Legislative Assembly another. The Government had given every assurance and worked away steadily with the railway.

(*Mr. Ashmore.*) It is not impossible that they should differ, because, as a matter of fact, they did. Your attention was invited by that report about the beginning of 1895 to the fact that the Louis Warnant controversy was still a living controversy.

(*Mr. Evan Thomas.*) I do not know whether we can go as far as that. As regards the Government there was no controversy. That is the great point. If we had known the minister, who was the Government, was going one way, and was signing cheques and signing certificates, and doing everything that anybody possibly could do, and that somebody else was going to pull differently, of course it would have been different, but the minister's certificate, being given in December with a knowledge of what it was going to be used for, practically said, "Everything is all right." It is either one of two things: either the minister defrauded us very much worse than the Oppenheims had treated the Government, or everything was all right; you cannot have it both ways.

(*Mr. Ashmore.*) What is the certificate of December to which you refer?

(*Mr. Evan Thomas.*) That one given by the minister that the share certificates were in order. Nothing was easier than for the minister, when asked openly for it by the company, to say: "There is some question, and I would rather not give it." He referred, moreover, to Pretoria. In Group 3B you will find the letter returning it, of the 11th December, 1894. The company asked for it on the 4th, and he took a week. The certificate states the coupons and the minimum dividend guaranteed in the clearest possible way. You will see from the correspondence already put in that the minister, long before the sale, was informed that there was going to be a sale, and he was informed that this was going to be used for that purpose, and nothing would have been easier if there had been any controversy, he being the Government as far as we were concerned, than for him to have said: "Gentlemen, there is some question, and I would rather not." I must also point out that the person who altered that had a double interest—not only were they afraid of this business not going through, but they were also afraid that, with regard to the shares they had sold to us in October, we should turn round and say: "Give us back our money," if we had found out that there was any question.

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(*Chairman.*) You were financing Westwood and Winby as far back as 1892, or the Mercantile Trust were?

(*Mr. Evan Thomas.*) The Railway Share Trust were financing them, and also Mr. Toleman, and also they got loans from the bank.

(*Chairman.*) Were you concerned with that in any way?

(*Mr. Evan Thomas.*) Yes, for the contractors, Messrs. Winby.

(*Chairman.*) You were in constant communication with them?

(*Mr. Evan Thomas.*) From time to time. I arranged sometimes with the Share Trust, and I think on one occasion with the bankers.

(*Chairman.*) To find them money?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) In order to do that you had made yourself acquainted with the condition in which Westwood and Winby were out there?

(*Mr. Evan Thomas.*) I do not think one heard much about that, because what they borrowed money upon was always upon the instalments which were due, and the Oppenheims generally gave a large block of the shares as collateral security; every time, I think.

(*Chairman.*) I suppose you were made acquainted with the date at which they stopped work?

(*Mr. Evan Thomas.*) No, because all those loans took place before the issue in 1894 of debentures. That put them on the shore altogether.

(*Chairman.*) Did your Local Board forward you on all the correspondence which took place?

(*Mr. Evan Thomas.*) I had nothing to do with the company then.

(*Chairman.*) In 1894?

(*Mr. Evan Thomas.*) No, nothing.

(*Chairman.*) The correspondence would, in the ordinary course, have been forwarded to the Oppenheims in Paris?

(*Mr. Evan Thomas.*) Entirely; it all went there.

(*Chairman.*) When did you become aware that the works had been stopped?

(*Mr. Evan Thomas.*) I do not think I became aware of that until the end of the summer of 1895. They were not, I think, actually stopped until August, 1895.

(*Chairman.*) You mean the whole of the work.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Did not you know that they were stopped as regards the great bulk of the work in 1894? Were you not aware of that?

(*Mr. Evan Thomas.*) I am aware now, but they were very close always about the company's affairs.

(*Chairman.*) When did you see the correspondence between the local board and the company for the first time? You became a director in January, 1895.

(*Mr. Evan Thomas.*) I became a director for the purpose of representing the English shareholders. I never acted until that meeting of May 3rd, when that letter of reply was sent to Mr. Smit. The first time I saw anything of the correspondence was in the Yellow Book published in July, 1896, and the bulk of the letters that passed I did not see until Mr. Van den Broeke's pamphlet, which he published in Pretoria, came over here and was translated about August, 1897.

Mr. H. G. Stephenson.

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That is the first time I saw all those letters or knew of their existence.

(*Chairman.*) You cannot tell me the date at which you became aware that the works were stopped.

(*Mr. Evan Thomas.*) No, I cannot.

(*Chairman.*) The case you now make is that Oppenheim, whatever he has done (and he has been dealt with by the Law courts) in the negotiation of these proceedings, deceived you by a false document.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) For the purpose of making money himself, I suppose; for the purpose of inducing you to float this issue and thereby to sell his shares.

(*Mr. Evan Thomas.*) We asked for this document. If they had not altered it, it would have shown us at once that there was something going on, and there would have been no sale.

(*Chairman.*) Exactly; and his object in doing so, as I understand you, was that there should be a sale.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) And the object of the sale was that he should dispose of his shares.

(*Mr. Evan Thomas.*) Of some of them.

(*Chairman.*) It is better to put it straightforwardly—that he should fraudulently dispose of his shares.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Upon a prospectus which omitted material facts.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) That was his object.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Last time you told us that, with regard to £100,000, that is, £100,000 out of £300,000 realised by this or which could have been realised by the sale of those shares, Oppenheims forbore to reap £100,000.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Have you any theory as to that?

(*Mr. Evan Thomas.*) You mean as to why he did so.

(*Chairman.*) Assuming against him for the moment that what you say is correct, that a man on a fraudulent prospectus, which he knows to be fraudulent, has the opportunity to make £100,000, or rather, his share of that £300,000, and he is content not to reap £100,000, but accepts share certificates for that amount. That was what you pointed out last time.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) It seems astonishing. Have you any explanation?

(*Mr. Evan Thomas.*) In the light of present events it does seem astonishing, but, of course, at that time I have no doubt whoever altered that never dreamed for a moment that things were going to turn out as they have, and he did not at that time ever anticipate that things were going to happen as they did. You asked me to bring a list of underwriters, and I have brought it. I have no particular theory. I do not know exactly what was in his mind. I suppose it must have been to give us confidence that everything was all right.

(*Chairman.*) To what extent did Oppenheims underwrite this issue?

(*Mr. Evan Thomas.*) You will find it down in that list.

(*Chairman.*) £26,000, is it not?

(*Mr. Evan Thomas.*) It is more than that. It is nearly £50,000.

(*Mr. Ashmore.*) It is about £42,000.

(*Chairman.*) Then the railway Share Trust——

(*Mr. Evan Thomas.*) I wish to say I see they only took £10,000. I said the other day that they took £20,000.

(*Chairman.*) That is £52,000 between the Oppenheims and the Share Trust.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Did you take any.

(*Mr. Evan Thomas.*) Yes, I took some—I underwrote 500 shares.

(*Mr. Ashmore.*) Did your company take any.

(*Mr. Evan Thomas.*) Yes, they underwrote 500 shares.

(*Chairman.*) Then between the persons who were in point of fact vendors of the shares, that is to say between the Oppenheims and their group, yourself as an individual, the Mercantile Trust, of which you were chairman and the Share Trust, how much of that issue was underwritten. It is something like £70,000 or £80,000, is it not?

(*Mr. Ashmore.*) It is £62,000.

(*Mr. Evan Thomas.*) There were a great number of people who went short. There were many more applications for underwriting than there was underwriting to be done.

(*Chairman.*) What was the reason of Baron Oppenheim's philanthropy towards this body of underwriters. He had a right to sell his shares, such as were not taken by the public to these underwriters.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) How was it he did not do it? Was there any understanding between you?

(*Mr. Evan Thomas.*) No, absolutely none. Upon that point I was going to say a few words. That is the very point you asked me about last time.

(*Chairman.*) I want to keep you to this point for the moment.

(*Mr. Evan Thomas.*) It bears upon it.

(*Chairman.*) Was there any understanding or arrangement between the Share Trust, the Mercantile Development Company, the bankers, and the underwriters at all that bears on the written documents?

(*Mr. Evan Thomas.*) Absolutely none—nothing whatever. We it was who insisted they should put in as many shares as they did. They did not want to.

(*Chairman.*) Would it have been resented as between the underwriters and the Oppenheims if they had had to take up these 100,000 shares.

(*Mr. Evan Thomas.*) Not at all.

(*Chairman.*) These underwriters were a body of business men of ability and experience; I have just glanced through them.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) If they had had to pay money on this prospectus do you think that as a body they would have taken proceedings against Oppenheims

(*Mr. Evan Thomas.*) Certainly not. There was nothing whatever at that time—absolutely nothing.

(*Chairman.*) Except the fact that there was at that time (I am not saying the least word about this being known to you one way or the other), the fact that the works had been stopped, and there was an acute controversy between the Transvaal Government and the company.

(*Mr. Evan Thomas.*) Between the Railway Commissioner.

(*Chairman.*) And the whole of the Oppenheims shares were being disposed of. If those three facts had been disclosed on the prospectus (and the Oppenheims, at any rate, knew them), do not you think these gentlemen would have had something to say if they found it out.

(*Mr. Evan Thomas.*) If they had had any opportunity no doubt we all should.

(*Chairman.*) I do not know, and I daresay you can not, but may that have had something to do with the Oppenheims not having recourse to these underwriters?

(*Mr. Evan Thomas.*) Certainly, with what I know now, which is since the last meeting.

(*Chairman.*) It is not an unlikely explanation of it.

(*Mr. Evan Thomas.*) No, I should say very likely.

(*Chairman.*) The public are not so well organised and not so experienced as these gentlemen in this list.

(*Mr. Evan Thomas.*) I can assure you most absolutely there was no understanding between anybody about that.

(*Chairman.*) Now, I should like you to say what you were going to say when I interrupted you.

(*Mr. Evan Thomas.*) You asked me many questions last time about the Oppenheims selling shares. At the time, especially as I know everything now, it was difficult for me to say when I knew a particular thing till I referred. I find, going into that question, that the boot was really on the other leg. It was I who insisted on their putting in 15,000 shares, and, unless they would, I would not go on. They wanted to sell some of their shares but they did not want to part with control. When the thing came to be considered further, the Stock Exchange people said "You must make sure that the Oppenheims have the control of the balance of the shares or

else, in three months time or six months after we have got a quotation there will be some more of these shares that will be sold, and it will break the Stock Exchange rule that you must not have a second issue within so many months, and we should lose our quotation. I wrote to Oppenheims, and there is his answer given at the time showing what was in our mind at the time, and showing that so far from any suspicion of that, it was we who were making them sell more than they wanted.

(*Chairman.*) He wrote this letter to you.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) You wrote first.

(*Mr. Evan Thomas.*) I cannot say whether it might have been verbal.

(*Chairman.*) This letter of theirs purports to be in reply to your enquiry. What was your enquiry?

(*Mr. Evan Thomas.*) My enquiry was as to whether he controlled the majority of the balance of the 25,000 shares.

(*Chairman.*) In answer to that he wrote: "Dear Sir,—London, 14th December, 1894. In reply to your enquiry as to where the remaining 10,000 shares of the Selati Railway are I beg to inform you that my group hold 8,100 of these, and the control of my group is in my hands, and there remain therefore only 1,900 shares outside.

(*Mr. Ashmore.*) That refers to the 10,000 shares that were not sold.

(*Mr. Evan Thomas.*) Yes. Therefore I think that goes to establish that at that time we had made no enquiries as to whether they were Oppenheims' shares or whose they were, and it was only in this group, and as it was we who were making him sell more than he wanted to sell it was not likely we should enquire "Whose are these"? I wish absolutely to state until the negotiations in June, 1898, I had no details either as to how their group was made up or who held the shares. They never gave me any information. As was natural, they were very close about it.

(*Chairman.*) You say in any case this letter shows the Oppenheims and their group were not selling the whole of their shares.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) And you also say you wanted them to sell more.

(*Mr. Evan Thomas.*) Yes; they did not want to part with the control.

(*Chairman.*) You wanted to get the control for the English shareholders.

(*Mr. Evan Thomas.*) Yes; and I will explain to you why. The guarantee of the shares is to the company. If there is any bad management in the carrying on of the company afterwards, and they do foolish things, and do not get the leave of the Government before they begin working on sections or anything of that kind, there might be disputes. Therefore it was essential for us to get such a control that we could control the Board of Management, and see that there were not rows. I think that letter shows that the idea of their unloading was not in our mind at all. It was we who were taking precautions and saying, "You must sell," and we who were trying to make sure that they had the control of the others. May I ask if you want Mr. Stephenson any more?

(*Chairman.*) No, unless Mr. Stephenson wishes to add anything.

(*Witness.*) No; I do not wish to add anything, but I should be pleased to answer any question you wish to ask.

(*The witness withdrew.*)

(*Chairman.*) Now, Mr. Evan Thomas, you handed us a list last time of the shares sold.

(*Mr. Evan Thomas.*) I got those from the printed papers which were put in at Brussels.

(*Chairman.*) You believe them to be accurate.

(*Mr. Evan Thomas.*) I have no knowledge whatever. I have taken it simply from a printed book.

(*Chairman.*) As regards yourself, you believe it to be accurate.

(*Mr. Evan Thomas.*) Oh, yes, as regards ourselves.

(*Chairman.*) When did you acquire your holding in the shares?

(*Mr. Evan Thomas.*) About 20th October, 1894.

(*Chairman.*) They are bearer shares.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) How come they to be a third—595⅓?

(*Mr. Evan Thomas.*) Because you will see the Railway Share Trust, Mr. Macrae, Capt. Pavey, and myself make up 1190⅔, and we each had thirds.

(*Chairman.*) The share trust is represented by first itself, 297⅓.

(*Mr. Evan Thomas.*) That is all it had.

(*Chairman.*) Then Mr. Macrae, who is a director, and Mr. Pavey, who is the Chairman, make up 595⅓?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Then comes your individual group, which is 595⅓?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Then there is R. and E. Oppenheim, personally, who have 595⅓.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Then this was a block in which each of these parties held a third.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) What was the history of that?

(*Mr. Evan Thomas.*) We were to buy these shares, which were to be sold by the public.

(*Chairman.*) What do you mean by the public?

(*Mr. Evan Thomas.*) By somebody in the Transvaal it was put to us, and Oppenheim said he would take a third too. A certain specified number of shares were to be bought, 1,700 odd. Now on the paper I find we did not do that in fact. Porcheron, one of the concessionaires, and the Oppenheims had been having a quarrel for a long time, and they wanted to settle that with him, and our money really went to buy Porcheron's shares and smooth him down. That was an additional reason why they did not want us to know what was going on. They wanted the new shares to be sold, and they wanted to keep us from knowing that what had been represented to us was not true.

(*Chairman.*) I do not quite follow that. You bought in October?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) Do I understand that you three parties bought in October, at the same time?

(*Mr. Evan Thomas.*) Yes, 1,786 shares.

(*Chairman.*) You bought at that time not for yourselves, but for someone else?

(*Mr. Evan Thomas.*) No, we bought for ourselves.

(*Chairman.*) When the shares are issued in the following year you sell those, that amount being the entire amount of your holding at that time?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) And receive the proceeds?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) And the Share Trust and the Oppenheims also receive the proceeds of theirs?

(*Mr. Evan Thomas.*) Of these 595, you mean?

(*Chairman.*) Yes.

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) I understood from something you said, you reinvested in the company?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) To what extent?

(*Mr. Evan Thomas.*) Our group reinvested to the extent of 1,003 certificates, and we put in 695—you will see, the 100 of the mercantile and 595. That makes 695, and we between us took out 963, and I bought 48 a week after, making over 1,000.

(*Chairman.*) Did your group re-invest in the certificates?

(*Mr. Evan Thomas.*) Yes, they took over 1,000, and have them now.

(*Chairman.*) To the extent of about two-thirds.

(*Mr. Evan Thomas.*) I do not know anything of the Share Trust or Mr. Macrae. I am speaking entirely of myself, and the 100 of the Mercantile. We put in 695⅓ shares, and we re-invested, and hold now over 1,000 certificates. That I did not say the other day because I had not looked into it, and I did not know what the facts were at the time.

(*Chairman.*) Did you pay for those shares in October, or was it made a matter of account between you?

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(*Mr. Evan Thomas.*) No, I paid; but the money went out partly to the Transvaal and partly to Baron Oppenheim.

(*Chairman.*) For the full amount?

(*Mr. Evan Thomas.*) Yes. We thought we were buying from outside people. As a matter of fact, I know now that we were being used to square the concessionaire, who was making trouble.

(*Chairman.*) That is what I did not quite follow. I did not quite follow the relation of this transaction with Porcheron? With regard to these 1,786 shares, we thought we were buying from outside holders, as a matter of fact, I allege, and the correspondence shows it is so, the 1,786 shares were Porcheron's shares, which they bought from Porcheron and gave to us.

(*Chairman.*) The Oppenheims did?

(*Mr. Evan Thomas.*) Yes, Porcheron was making trouble about the accounts between them, and they wanted to spare him, and, therefore, they induced us to buy these shares.

(*Chairman.*) Squaring him in part themselves by their contribution to the block?

(*Mr. Evan Thomas.*) Yes.

(*Chairman.*) And using the Share Trust and yourselves to help them in that object.

(*Mr. Evan Thomas.*) That is right.

(*Mr. Loveday.*) I want to take you back to the special report of the Volksraad Commission on the report of the Railway Commission of 1894. You see the resolution was passed there instructing the Government specially to carry out the recommendations of that special Commission?

(*Mr. Evan Thomas.*) Yes.

(*Mr. Loveday.*) One of the recommendations was this: "From the contract made"—that is, the Louis Warnant contract of £400,000—"and referring to the above article, and taking into consideration that the Government have given notice that they do not recognise that contract, and ignore it, your Commission consider it necessary to recommend that the Government be instructed to make a thorough investigation, and to act accordingly." That was on the 15th September.

(*Mr. Evan Thomas.*) Yes.

(*Mr. Loveday.*) Therefore you knew that there must be a thorough investigation made before the Government could act?

(*Mr. Evan Thomas.*) No, we did not.

(*Mr. Loveday.*) But that is the report?

(*Mr. Evan Thomas.*) Yes, but then you are reading that now. We did not know then what the relations between the parties were. That is an allusion to the letter of Leyds' of the 12th of June.

(*Mr. Loveday.*) No.

(*Mr. Evan Thomas.*) Yes, it is so.

(*Mr. Loveday.*) It is an allusion to their own report. What I have read you is a portion of that report, and there is a specific instruction to the Government to make a thorough investigation, and also that the Government have given notice that they ignore the contract of Louis Warnant.

(*Mr. Evan Thomas.*) What I want to say upon that is that the Government giving the notice was a phrase in Leyds's letter of the 12th June. They quoted textually the words. That was all squared up and settled.

(*Mr. Loveday.*) Leyds's letter of the 12th June, I believe, they have taken word for word in this special report.

(*Mr. Evan Thomas.*) You cannot have it both ways. They settled all that up when they altered the concession, and there was nothing to show there that the Government had ignored it, because, as far as we could see, the Government had done absolutely the other thing. They said they would not allow the issue until these matters were settled.

(*Mr. Loveday.*) But they recommend the alteration of the concession in this very report, and they at the same time instruct the Government to inquire thoroughly into this matter of the £400,000.

(*Mr. Evan Thomas.*) I cannot tell what the relations between the Government and the Volksraad were. All I can say is the Government went on their own way, and they had already settled it.

(*Mr. Loveday.*) You were in possession of this instruction from the Volksraad, and the Government were bound to act under it?

(*Mr. Evan Thomas.*) We had only a very abridged newspaper report from the press reporting the debate, and as far as we knew, everything had been settled, and everything as far as the Minister who was working at it was concerned was going all right. We must go back to what was in our minds at the time. What happened in Pretoria or in the Volksraad was of very little importance at that time, because everything had been settled up as far as we knew, and therefore that was all ancient history.

(*Mr. Loveday.*) On the 15th September?

(*Mr. Evan Thomas.*) Yes. It referred to the old June business, and the old June business was all settled.

(*Mr. Loveday.*) But here is a special instruction on the 15th September to inquire into the £400,000, which the Government say they ignored altogether.

(*Mr. Evan Thomas.*) I cannot agree that the Government did ignore it. I do not know what Mr. Smit told you and the Volksraad Commission. The Government had not ignored it, because they settled the matter.

(*Mr. Loveday.*) The Government is subject to the instruction of the Volksraad, and you knew it.

(*Mr. Evan Thomas.*) We could not go into those matters. We only dealt with Mr. Von Blokland.

(*Mr. Loveday.*) Then again in 1894 you stated you were financing the contractors?

(*Mr. Evan Thomas.*) No; that was before.

(*Mr. Loveday.*) I suppose during 1894 you would probably meet the contractors, Westwood and Winby. You would meet either Mr. Winby or Mr. Westwood?

(*Mr. Evan Thomas.*) Yes; I generally saw Mr. Tatham.

(*Mr. Loveday.*) Did you never hear from either of them the line had been stopped?

(*Mr. Evan Thomas.*) No; they would not be likely to tell me that if they wanted me to borrow money for them. Besides, after the 1st of August, 1894, there was no financing required, because they got over £300,000 from Mr. Von Blokland and Oppenheim, as trustees.

(*Mr. Loveday.*) But you had an interest in seeing the construction going on?

(*Mr. Evan Thomas.*) No; I had nothing whatever to do with it after that. The company gave them the cheques, and the whole thing was being carried on.

(*Mr. Loveday.*) The company was still issuing cheques for construction, although the line had been stopped?

(*Mr. Evan Thomas.*) I cannot say whether the line had been stopped, but, as I informed you the other day, Von Blokland signed a cheque as late as 25th January, 1895, to the company for an advance for construction.

(*Mr. Loveday.*) Yet in the middle of 1894 the construction had ceased?

(*Mr. Evan Thomas.*) I know nothing about that. It seems to me very curious that it should have ceased.

(*Mr. Loveday.*) And Westwood and Winby were in communication with the local board at Pretoria, asking them to allow them to continue the construction?

(*Mr. Evan Thomas.*) Yes; but with regard to all these matters, I had nothing whatever to do with the company at the end of 1894 or in 1894 or with the company's matters. It was not likely, as you have seen from the evidence, that they were likely to tell us anything about their private concerns, and I had no interest in it, whether the construction stopped or not.

(*Mr. Loveday.*) You never heard from the contractors that the line had been stopped in 1894?

(*Mr. Evan Thomas.*) Not till afterwards.

(*Mr. Loveday.*) Not in the year 1894?

(*Mr. Evan Thomas.*) No; and I do not think it was either. I judge from the subsequent papers. I do not admit it was stopped. They could not agree with Mr. Smit.

(*Mr. Loveday.*) As a matter of fact, I can tell you it was stopped.

(*Mr. Evan Thomas.*) It was not stopped by any disputes of that kind about contracts. It was stopped because they could not agree upon a route, but it was not

stopped *qua* Warnant's contract. That was a departmental matter with which we have nothing to do.

Now, sir, I was going to ask Mr. Lea on a personal matter. I wanted to show that in 1897 we had an offer from Baron Oppenheim, transmitted through him really from the Transvaal, to buy the shares, first at 7 and then at 9, which latter offer would have given the English shareholders 13. Every certificate-holder on the committee was anxious to accept this offer, and I urged them not to. They came round to my view, and we did not accept this offer. One of the conditions was that if Oppenheim took any shares he was to have a release. I only wanted to put that before you to show that if I had had any wish to save myself in any way at the expense of the shareholders, it is not likely that I should have violently urged for many months that they should not accept an offer which would have let me out. May I be allowed to establish that?

(*Chairman.*) Certainly.

(*Mr. Ashmore.*) Before we go to that, these are the shares in which the persons who were parties to the prospectus were interested, which I have marked in this list. Those persons guaranteed together a sum of £91,355.

(*Mr. Evan Thomas.*) Yes.

(*Mr. Ashmore.*) Oppenheims took out of the subscription £52,600, and they left in £98,200? *Mr. E. Evan Thomas.*

(*Mr. Evan Thomas.*) 4,900 shares. 30 Jan. 1901.

(*Mr. Ashmore.*) I think it comes to that. Does it not occur to you that Opperheim's object was to spare those persons who were parties with them to this prospectus?

(*Mr. Evan Thomas.*) Not a bit. I do not think he knew anything about it.

(*Mr. Ashmore.*) About the prospectus?

(*Mr. Evan Thomas.*) No; not the practical working of the thing. I can assure you there was nothing of that. I want to make it quite clear to you that, so far from there being a difficulty about the underwriting, £150,000 more was applied for. It was a matter of who should underwrite, and not who should not. It was not a question that it was a difficulty, but a lot of people were given short. The thing looked perfectly all right at that time.

(*Chairman.*) I see the underwriting contract is $2\frac{1}{2}$ per cent. only, and 1 per cent. for the broker?

(*Mr. Evan Thomas.*) Yes.

Mr. George Henry Clarke Lea, called; and Examined.

(*Witness.*) Mr. Evan Thomas has asked me to give a short statement as to the origin of this committee.

3900. (*Chairman.*) What committee?—The certificate-holders' committee. It originated in a meeting in my office in February, 1897. Some communications to the Press brought together a body of the certificate-holders, and we eventually got into communication with Mr. Evan Thomas and the company, and finally represented about five-sixths of the trustees' certificates. I was in constant communication with Mr. Evan Thomas, and to the best of my belief he furnished me with every information, all the correspondence and everything which took place after that time. He attended the committee meetings, and he put before the committee from time to time the various offers which were made. The first, I think, came in December, 1897, through Baron Oppenheim's solicitors, in which he asked for an option to buy, I think, two-thirds of the trustees' holding at a price of 7. I think it was three-fourths, and not two-thirds. This was declined, principally at Mr. Evan Thomas's instigation. There were a good many of the committee who would have been anxious to take anything they could get, but eventually it was declined because there did not seem to be any assurance that the remaining one-fourth would be safeguarded in any way. Then about a year later a further offer came through a firm in London to purchase our holding at the price of 9, Baron Oppenheim at the same time offering to put in the shares which were held in his name (about 4,900), which would have given us 13. Again a good many of the committee were anxious to take this, but Mr. Evan Thomas protested, and he ultimately persuaded us to decline. One reason which he gave for this was that it was obviously to somebody's advantage to pay us off at 9. The reason he gave for this was that an actual offer had been made to him of £5,000 to withdraw his opposition. On hearing this we refused the offer altogether. Later on, when the negotiations went to Pretoria, the matter was left by the committee practically in Mr. Evan Thomas's hands, and I believe an actual offer was made by the late president of 11, and I think there was only about 10s. a share between the president and our representative out there in the matter of a settlement. Throughout the whole business Mr. Evan Thomas simply took the position of a shareholder. He said, "I have brought a good many of my friends into this thing, and I mean to get them out." *Mr. G. H. C. Lea.*

(*Mr. Evan Thomas.*) Now, sir, would you require to have what I said about our having taken up the 1,000 certificates confirmed? Mr. Ogle is here if you would like to hear him.

(*Chairman.*) I think it would be satisfactory.

Mr. Newton Ogle, called; and Examined.

3901. (*Chairman.*) You are a director of the Mercantile?—Yes.

3902. It is a private limited company, in which there have never been any founders' shares or anything?—Absolutely.

3903. The capital is all on the same footing?—Yes.

3904. The directors, who are all, I think, large shareholders, have always tried to put business in the way of the company?—On many occasions.

3905. The first business that the Mercantile had in connection with the Selati was the original loan to the contractors, of which they took £10,000 out of the £30,000, the Share Trust taking the other £20,000?—Yes.

3906. For that do you know that the Mercantile issued debentures to raise £10,000?—Yes.

3907. Of that £10,000 I took £5,000; you took £2,000, and two other Directors took £2,000 more?—Yes. *Mr. N. Ogle.*

3908. So we took £9,000 out of the £10,000?—Yes.

3909. I also put the Mercantile into the Debenture Syndicate of the Railway, did I not?—Yes.

3910. You and the company both subscribed for debentures?—Yes, I did on both occasions. There were two issues.

3911. In the same way when the share business came on in 1895 you applied for 500 certificates?—I did.

3912. You enabled the Mercantile to apply for 250?—I did.

3913. Both these amounts are still held?—They are.

(*Mr. Evan Thomas.*) That accounts for 750. I had 50, making 800; my own brother and cousin had 150 more each, my office 55 certificates, and I had 48 a week afterwards, which makes up the 1,003.

IRON CONCESSION (*continued*).

[The following letter from Mr. J. C. A. Henderson was put in.]

Mr. J. C. A. Henderson.

30 Jan. 1901.

Sun Court, Cornhill, London, E.C.,
15th December, 1900.

To the Chairman of the Transvaal Concessions Commission.

Sir,—Supplemental to the information which was supplied to you by my temporary agents and legal advisers in the Transvaal, I beg respectfully to submit the following facts connected with the concession for the manufacture of iron, of which I am the holder. I regret if these should in any way overlap the information already supplied to you, which was not the final position, but I am aware from the difficulties under which that was given to you, it must necessarily be very incomplete, as my ordinary representative was not allowed to proceed to the Transvaal.

The Commission is already in possession of copies of the concession itself. It is dated 7th July, 1882. The period of it is twenty years, and the rent payable to the Government was £100 for the first year, with a uniform increase of £100 each succeeding year.

The rents were duly paid up to 17th July, 1898, when I paid to the Government £1,700 in respect of the 17th year. The total payments made to the Government for the concession up to that date were £15,300.

After the concession was acquired from the holder, endeavours were made to complete arrangements for starting the industry, and the best known experts were sent from this country at heavy cost to advise on the soundest and most economical methods of procedure. Unfortunately the state of the Transvaal became such as to prevent the necessary capital being obtained, in the year 1896 I again purchased it.

In addition to the £15,300 which has been paid to the Government entirely by or through me, and the liability upon me for further rents amounting to £5,700, I have spent an amount upon the concession which will bring the total up to, say, £50,000 cash.

Since then I have done everything that, humanly speaking, was possible to give effect to the concession, keeping in view the fact that it could only be dealt with at a very large expenditure of capital, and guarding against its being exploited for simply speculative purposes. But by the time I had, at further heavy expense perfected my arrangements (which you will readily recognise were of no easy character in starting an entirely new and complex industry in a country whose mineral character has only since become properly known) when the political elements which for the last five years have governed the Transvaal made themselves felt. These told with extra severity on this scheme, because

1. Being a venture of an entirely new character, it above all things depended on the continued development of the general trade and industry of the country —to which political disquietude was inimical.
2. The gradual lapse of the period of the concession, which is essentially one requiring heavy expenditure with little or no hope of reaping results for the first few years, during which, indeed, they could hope to do little more than arrive at the first practical stage, although for that purpose the least expenditure necessary would have been £500,000.

Recognising these disadvantages, I entered into negotiations with the Transvaal Government for the cancellation of this concession in consideration of their granting me a new contract for a period of 30 years from its confirmation by the Volksraad. A copy of that new contract is sent herewith.

On the 17th of August, 1898, the Volksraad passed a resolution (copy herewith) agreeing to my proposal, and instructing the Executive Council, on payment of the full rents due under the concession to 1902, to enter into a contract with me for the erection of an iron factory in accordance with Art. 1871 of First Volksraad Resolution of 3rd November, 1896.

In view of the arrangement for cancellation of the concession, which only the conditions of constant political unrest had prevented my carrying out, I applied, through my solicitors, by letter dated 14th June, 1899 (copy herewith), to the Government for an extension of the due date of the payment of the rent due under the concession for the eighteenth year on 7th July, 1899, namely £1,800.

By resolution dated 7th July, 1899, of the Executive Council, (copy herewith), the Government granted the postponement for a period of eight months on condition that security to the satisfaction of the Auditor-General should be given, and that the £1,800 should be paid on the expiry of said eight months with 5 per cent. interest.

The conditions contained in that resolution were duly complied with, and I enclose copy of the Auditor-General's receipt for the security lodged—2,000 shares of the Ermelo Railway Company, Limited.

Accordingly, the postponed due date of the £1,800 (and 5 per cent. interest) was 7th March, 1900; the rent for the 19th year, viz., £1,900, also fell due on 7th July, 1900.

Owing to the existence of a state of war neither of these payments have been made, but I take it that this can in no way derogate from my rights.

The position, therefore, at the date of the outbreak of the war was, that upon paying the balance of the rents for the unexpired portion of the concession, which I was and still am prepared to do, and cancelling my rights thereunder, I was entitled to have the new contract referred to in the Volksraad resolution of 17th August, 1898, granted to me by the Transvaal Government, and I humbly submit that that is the position to which I am entitled on the resumption of civil government.

In confirmation of this statement of the position, I send herewith copy of letter addressed by my agents to the State Secretary on 22nd February, 1899, and copy of latter's reply thereto, dated 4th March, 1899. On reference to these you will observe that the State Secretary confirms my reading of the Volksraad's resolution of the 17th August, 1898, as given above.

I am aware that in the circumstances with which you are now dealing, it is inevitable that in some instances private rights must be over-ridden by high policy, but I submit that the terms of the new contract which the Government agreed to enter into with me are not open to any economic objections. It in no way constitutes a monopoly, nor does it in any of its terms depart from the methods adopted by some of the most enlightened of the civilized countries in dealing with the establishment of an entirely new industry. I suggest to the Commission that it is inevitable that some scheme of this nature is what is not only desirable, but absolutely necessary for the development of the iron industry in the Tranesvaal and that it would be a grave injustice if the fruits of my heavy expenditure and years of preliminary research in the matter, undertaken on the faith of my contract with the Government, should be passed on into other hands.

At a large expenditure of capital I have purchased and obtained the mineral lands recommended by the experts sent from England and Scotland as necessary for the erection of the iron works and for the working of the industry for which it was estimated a population of not less than 3,000 would be necessary consisting largely of skilled workmen drawn from England, who would form an element in the Transvaal which would be of substantial importance to the Empire at the present juncture, quite apart from the creation of a staple industry in the country. This manufactory would in cases of emergency be of moment for the manufacture of arms and ammunition—a point to which the Transvaal Government attached much importance. I may state in this connection that I have in the past refused to allow this concession to be sold in Germany, knowing, as an Englishman, what it might mean in the hands of possible enemies of the country, and events have justified my decision.

If you have been good enough to follow me thus far, I trust I have been able to make out a clear case why you should not confine your enquiries in the matter of this concession to the concession only, but include what is described as the new contract as well. Looking to the fact that at the date of the outbreak of war, I was entitled to the issue of the new contract in exchange for the cancellation of the concession and the payment of the rents upon it, I would urge that view upon the Commission. I am aware that the scope of your enquiries is limited to those concessions in respect of which the Trans-

vaal Government had incurred definite legal obligations, and I submit that the new contract falls sufficiently within that category to require its being included. By the resolution of the Volksraad the Executive Council were instructed to enter into a contract with me—and that resolution, as well as the form of the contract, was published by the Transvaal Government, as you will see by their State print thereof sent herewith. The State Secretary's letter of 4th March, 1899, which I have already quoted, confirms this, and binds the Government down to the form of contract, and I have, as I was entitled to do, acted on the faith of these obligations.

I venture to say that on no concession granted by the Transvaal Government has more money been legitimately spent in arriving at a proper knowledge of the conditions under which it is necessary to proceed in developing the industry which it contemplated fostering, and that this end can, under a more liberal administration, be speedily achieved by leaving my rights under the new contract unimpaired. I would specially refer you to Article 10 of that contract as an illustration of the sound economic principles upon which it is based.

Summarised, I claim that the position is:—

1. I am the legal holder of the iron concession.
2. The Transvaal Government have agreed to enter into the new contract with me.
3. The terms of the new contract are definitely fixed.
4. That I have not, by failure to implement any condition, or by any act of mine, given any ground for interference with my rights.
5. That, on the contrary, I have, on the faith of these rights, spent large sums of money.

Mr. J. C. A Henderson.

31 Jan. 1901.

I beg you to note that the information submitted to you at Pretoria in regard to the new contract by Messrs. Stegmann Esselen and Roos was erroneously attributed to them as being furnished on behalf of Mr. Labuschagne, and that it was really furnished on my instruction. The error arose from a misconception in the absence of any of the parties who had acted for me in the matter for some years. As you will see by the wording of the new contract, it is granted to the "lawful owner of the at present existing iron concession."

I shall be prepared, if you desire further evidence on the subject, to attend before the Commission at any time on receiving an intimation to that effect.

I have the honour to be

Your obedient servant,

J. C. A. Henderson.

Mr. J. C. A. Henderson, called; and Examined.

3914. (*Chairman.*) When did you become the owner, if you are the owner, of the iron concession?—It is stated in my letter to you. Roughly speaking, it is about ten or twelve years ago, I should think.

3915. I think Mr. Nellmapius, the original concessionaire, became insolvent?—That is so.

3916. Did you purchase from his trustees?—Yes.

3917. On the 28th March, 1889?—I cannot give you the dates, but the facts are the same—I purchased from his trustees.

3918. What did you buy the concession for?—I cannot tell at this moment, but from £8,000 to £10,000, I should think.

3919. (*Mr. Ashmore.*) You gave him that amount?—No; the trustees.

3920. (*Chairman.*) £4,500 is the figure we have before us?—That is a mistake.

3921. (*Mr. Ashmore.*) You filed a deed of sale, and that is the figure in the deed of sale?—I was under the impression that it was, as I said, but it is a long time ago, and I have not got all this before me.

3922. (*Chairman.*) If the deed of sale states the purchase money as £4,500, do you accept that as correct?—Without anything else, I would say so. I have no books saying so, but my impression is as I have said.

3923. Your impression is that it was more?—Yes.

3924. But you are not prepared to say that?—No.

3925. If that appears upon the deed, one would assume that to be correct?—There may have been some other business in connection with the trustees at the time.

3926. You have not any detail of that?—It comes back to me now. I do not know whether that was a liability on his part to the trustees which was satisfied by me, and something more than that I paid to them. I cannot tell you.

3927. This is in the deed—he cedes all right, title and interest for and in consideration of the sum of £4,500?—I am quite willing to admit that for the present purpose, although my impression is that it is as I said.

3928. Did you re-sell on the 25th April, 1889, very shortly after, to the Transvaal Government Iron Concession, Limited?—Yes.

3929. At the price of £16,400 sterling?—That would be about correct.

3930. And as a further consideration 18½ per cent. of the entire capital of a limited liability company to be established in England, "Payment whereof the said Henry Whitehead acknowledges to have received"?—If that appears, that would be correct.

3931. Did you get your 18½ per cent. of the capital in shares?—Yes. It was about 50,000 that I should have got, and I bought large numbers afterwards.

3932. In 1895 or about that time, did the company go into liquidation?—It was absorbed by another company to carry out the conditions of that.

3933. The absorbing company was the Exploring Land and Minerals Company, was it not?—The Transvaal Minerals Company.

3934. The Transvaal Land and Minerals?—The Transvaal Minerals, Limited.

3935. There was another cession from the Minerals Company to the British and Transvaal Financial Company?—Yes.

3936. Do you know what the consideration for that company was?—It was done for me.

3937. You were the Financial Company?—No, I was not, but it was done for me—in trust for me.

3938. They were trustees for you?—Yes.

3939. What price did you give for that?—I have only known of these things by detachments. I have not done very much of it directly myself, but roughly speaking, about £30,000. There was £26,000 odd, and then so many shares I bought.

3940. Have you any record of that?—

(*Mr. Bryson Butler.*) May I say that I am Mr. Henderson's manager. The facts are at my fingers' ends, and I should be glad if I might state the mechanical arrangements by which it was done. The Transvaal Minerals was in difficulties; that is to say, it had little funds and required financing, and it drew its support from the Exploring Land and Minerals, whose name you have mentioned; that is to say, it got advances from it. It granted bonds or mortgages upon its properties, its concession, and everything it had. A period came when it would not do so any longer; and I cannot tell you exactly what the figures are, but we may be able to furnish them to you. Mr. Henderson stepped in, and acquired from the Exploring Land and Minerals all its bonds and securities upon this iron concession and the other properties. He took them over. That is how the British Transvaal Company afterwards, on his behalf, acquired again the iron concession. They represented him really. He paid the Exploring Land and Minerals, I think at par, exactly what they had advanced, what they were out of pocket, and took their securities.

(*Chairman.*) Is the Financial Company still in existence?

Mr. J. C. A. Henderson.

30 Jan. 1901.

(*Mr. Bryson Butler.*) The Financial Company is still in existence.

(*Chairman.*) As holder of the concession?

(*Mr. Bryson Butler.*) I could not tell you whether it is registered in their name or in Mr. Henderson's, but if it is in their name it is in trust for Mr. Henderson.

(*Chairman.*) Was the concession you hold sanctioned by the Volksraad?

(*Mr. Bryson Butler.*) Do you mean the original concession?

(*Chairman.*) Yes.

(*Witness.*) Yes, it was granted by them to Nellmapius. The original concession is here, and we will hand it over.

3941. It is for twenty years from the 7th July, 1882. Then there is a rent payable of £100 a year for the first year, with a uniform increase of £100 each succeeding year?—Yes.

3942. For how long were those rents paid?—Up till the 17th July, 1898.

3943. How much did you pay the Government then?—£1,700 in July in respect of the seventeenth year.

3944. That gave a total up to that time that the concessionaires had paid to the Government of £15,300?—Yes.

3945. Have any instalments of rent been paid since that time?—No, the condition was that the Government practically gave me time to pay the next instalment against depositing security with them.

(*Chairman.*) Have you got the letters giving that consent?

(*Mr. Bryson Butler.*) I have a copy of the Executive Council's resolution, Article 599, dated 7th July, 1899. It is as follows:—"Copy Executive Council resolution, Article 599, dated 7th July, 1899, as addendum to Government missive R 3015/86 B.B., dated 7th July, 1899. On the order minute R 3015/86 (W.V.R. 930/97) containing correspondence regarding the establishment of iron factories within the South African Republic, and among which under R 8726/99, a letter dated 14/6/99 from the firm Stegman, Esselen and Roos for and on behalf of the present holders of the existing iron concession asking for a postponement of the payment of the amount of £1,800 which in terms of the said concession had to be deposited in advance by them for one year on date thereof. The Executive Council having noted the reasons advanced in the above letter, and having considered the matter, resolves under the circumstances hereof to grant the asked for postponement for a period of eight months under conditions, and on this understanding that proper security to the satisfaction of the Auditor-General should be given by the lawful holders of the concession before mentioned, and that the amount due, namely £1,800, should be paid on expiration of the said period of eight months, and that they should pay in addition to that amount interest thereon calculated at 5 per cent. per annum from date hereof, and for the period of the postponement granted hereby." There follows on that a copy of the receipt signed by J. S. Marais, Auditor-General, for the security deposit.

(*Chairman.*) The security for the £1,800 being 2,000 Ermelo railway shares.

(*Mr. Bryson Butler.*) Yes.

(*Chairman.*) When did that eight months expire?

(*Mr. Bryson Butler.*) In March, 1900, during the course of the war.

(*Chairman.*) I suppose you have not paid that sum because there is no government to pay it to.

(*Witness.*) That is so.

3946. Has the concession been modified in any way?—The concession as it was towards the end was unworkable, and that is why I tried very much to get a new concession, or rather it took the form of a contract which has been agreed.

3947. That is what you call the new concession?—Yes, on paying up the balance of the old concession which is a very materially different one.

3948. I am aware of that, but I want to get the date. Was that new contract entered into before or after the Executive Council had given you further time?—Before.

3949. What is the date of it?—The 17th August, 1898.

3950. We ought to have the letter before that leading up to the resolution of the Volksraad?—If I was to go through all that leads up to it it would extend over years.

3951. Is there a letter or anything of that kind?—No, nothing but the contract itself I am afraid that we could go into.

3952. You say that resolution is the 17th August?—Yes. It is Article 982. "The First Volksraad having given attention to Executive Council resolution, Article 461, dd. 28th April, 1898, in the matter of cancellation of the iron concession, and substituting therefore, as amended deed of agreement for iron factories at present on the order. Resolves, to unite themselves with same in so far that from the concessionaire be demanded the full amount due in terms of the concession until July, 1902, and further instructs the Executive Council to enter into a contract with applicant for the erection of an iron factory strictly in accordance with the model schema approved of by the First Volksraad resolution vide Article 1871, dd. 3rd November, 1896, and submit the same as speedily as possible to the First Volksraad."

3953. That is the title upon which you now rest?—With regard to the new contract.

3954. It is upon the new contract that you rely?—Yes.

3955. That is a contract in fact that the Government should submit a scheme pursuant to that model scheme approved on the 3rd November, 1896?—Yes. That which I got from the Government I presume the present Government will do for me. I am putting it in the general way that it is their obligation to carry it out.

3956. I do not know whether it is much good discussing a legal point with you, but I suppose you are aware quite well that the Volksraad had absolutely a free hand to reject the scheme proposed by the executive Government if they thought fit?—No. As I understand going through it there is a binding contract on the payment of the four years money. If I paid the money up there and then they would have done so, but I had time up to 1902 to pay that.

3957. The scheme of November, 1896, enables the Volksraad (I want to hear your view about it, because I may be wrong) to reject if it pleases the proposal or contract submitted to it by the executive Government.

(*Mr. Bryson Butler.*) It is the inherent power of any legislative assembly to reject anything submitted to it. It could never be interfered with I take it.

3958. (*Chairman.*) You know what the requirements under the scheme of 1896 were?—Roughly.

3959. You know the requirements of the country had to be satisfied. Article I. is "For the furtherance of inland industry any person or persons should be entitled to erect one or more factories excepting those industries for which already concessions or exclusive rights have been granted which are still in force. Anyone who desires to erect one or more factories in the South African Republic shall be bound to give notice of such his intention to the Executive Council, which body after having convinced themselves that such erection is in the interest of the land may give their consent under conditions later on to be agreed upon." Stopping there you say that has been done by the Executive Council?—Yes; by the Executive Council and approved by the Volksraad.

3960. (*Mr. Loveday.*) The terms of your agreement?—The terms of the contract.

3961. Which contract?—It has not been issued as signed, but it is deposited with the Government, and it is that which is referred to in the resolution of the Volksraad.

3962. Do you mean the first contract?—No, what we call the new contract.

3963. The new contract has been agreed by the Volksraad?—The terms of it are deposited with the Government, and are those referred to.

3964. It is yet to be submitted——

3965. (*Chairman.*) This is the resolution:—"Resolved to agree with same in so far that from the concessionaires be demanded the full amount due in terms of the concession until July, 1902, and further instructs the Executive Council to enter into a contract with applicant for the erection of an iron factory strictly in accordance with the model scheme approved by the First Volksraad resolution, vide Article 1871, 3rd November, 1896, and to submit the same as speedily as possible to the First Volksraad." What you say is that there is an instruction by the Raad itself to the Executive Council to enter into a contract for the erection of an iron factory?—Yes.

3966. The terms upon which that is to be done are the terms which are approved in the scheme of November, 1896?—Yes.

3967. And the Volksraad are to have that submitted to them to see whether that is carried out? That is your case?—Yes, provided there is nothing outside of it.

3968. Now let me draw your attention to this. By the scheme by Section 3 "The Executive Council should then after further sanction by the First Volksraad"—so the Raad keep its hold on the whole matter—"grant protection"—that is with the assent of the Raad—"in the form of the levying of special protective import duty for a period to be determined by them on such product as is to be manufactured, and as soon as it appears to their satisfaction that quality and quantity are sufficient"?—Yes.

3969. Therefore, assuming that the old state of things was continuing, and that you had got so far as to get your factory, you would then have to prove to the satisfaction of the First Volksraad that the quantity and quality were satisfactory?—That is practically provided in the new contract. That is one of the terms of the new contract.

3970. "And if it appears that the manufacturer fails to manufacture the required quantity and quality stipulated for the granting of protective right the Executive Council, with the further sanction of the Volksraad, should have the right to abrogate the levying of such duty"?—Yes.

3971. You come under the absolute discretion of the Volksraad?—There is no duty leviable under our contract unless in the event of our having the quantity and quality of the material.

3972. Of which they are alone the judges?—That is so.

3973. Now what do you say as to the merchantable character of such a contract?—You must leave us to judge of that.

3974. You are asking us, I suppose, to recommend the Government to sanction such a thing?—It is very little. It is only establishing a principle. The same principle is used in every British colony practically, and almost every civilised country in the world. It is simply protective duties. There is nothing particular to favour us. Other people can do the same if they choose.

3975. Just assuming (I do not say it is the case, of course) that the British Government do not embark in a protective system in the Transvaal, do you claim that you have any title to consideration, and if so I should like the measure of it?—We have the title to this consideration. Dealing with a Government, it is not for me to inform you what the titles are.

3976. Yes, I want to know what your case is?—As to the legal position?

3977. No?—Then the moral position.

3978. We have gone into what your position is exactly. I want you to put a figure on it if you can. I want you to say the best you can for yourself on it.

(*Mr. Bryson Butler.*) This is the point of view from which Mr. Henderson submits it to you, that for many years, notwithstanding the history you have traced of this iron concession, he has devoted himself to the consideration of this question, and he has had much more advanced views and higher views as to the likelihood of the successful founding of this industry in the Transvaal than other people have had. He has shown his faith and his belief by putting his money into it and following it up when it was not successful and the circumstances of the country were against the raising of the necessary money for doing it on a proper scale. He has followed it up by putting his money into it when he might have dropped it and cut his loss so far as the money was concerned, but he has not done so. He has followed it up till now. Some few years ago he saw that it was impracticable with the period of this old concession to raise the large necessary funds, fully half a million probably, before it could be properly dealt with according to estimates which we have in our possession now, which have been got at great expense. He saw that it was impracticable to deal with it in that short period, and he entered into negotiations with the Transvaal Government for the purpose of obtaining this new contract. I need not point out that that was a matter which required long and difficult negotiation. This contract, we submit to you, is one of an essentially fair character for any country to have entered into, and should not be viewed in the prejudicial manner that it is apt to be viewed because it emanates from the late Transvaal Government. We submit it is a fair contract for any country to enter into provided it is dealt with properly by those who obtain it. It does not give us any undue advantage over anybody else. We therefore submit, as far as the moral consideration is concerned, it can only be measured by the expenditure which Mr. Henderson has been out of pocket.

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(*Mr. Ashmore.*) Shortly, Mr. Henderson has contributed faith and hope, and you want the British Government to contribute charity?

(*Mr. Bryson Butler.*) No; Mr. Henderson has contributed money constantly.

(*Witness.*) I have taken a very great real of trouble and done a great deal of work to get the best possible place to erect these works. Moreover, I wanted it to be a reality, and not a farce. It was suggested to me many times that it might be used for blackmail to make a small company.

(*Mr. Bryson Butler.*) To make a pretence?

(*Witness.*) But that was not the purpose I wanted it for. I wanted it for a reality, and that means a very great deal of money—£500,000 for the equipment. You have to do many things over there, and you require a larger plant in proportion, because there is not the tremendous amount of stuff to be made from each one thing.

3979. (*Chairman.*) Granting that you have spent, as undoubtedly you have—in rental alone certain moneys, or the concessionaires have spent a certain sum of money, you did that in the hope of ultimately persuading the Volksraad to consent to a contract which would give you a commercial advantage?—Yes, a fair one.

3980. There is nothing essentially unfair in a protective contract. Nobody would say so, but you were content to incur that expenditure without any binding obligation on the part of the late Government?—It was promised to me.

3981. There was no binding obligation therefor?—I am not quite at one. What do you mean by binding obligation?

3982. Any binding obligation of the Government to approve your factory, or to say that the output was in quantity and quality satisfactory——

(*Mr. Bryson Butler.*) That was a matter which would be in our power if the Government did not interfere with our rights. We can produce the quality and quantity.

(*Chairman.*) You think so. You may have a sanguine view on that, but the Volksraad is a body who might have its views on the subject.

(*Mr. Bryson Butler.*) We trusted them for the future.

(*Mr. Loveday.*) You just now stated you did not want to erect anything that might be considered a blackmailing institution. I have here the contract which you placed before the Rand, and which you asked to have substituted for your old contract. In that contract you only wish to bind yourself in Article 3 to make 100 tons of cast iron and 100 tons of wrought iron. Do you consider that sufficient?

(*Witness.*) I had my solicitors there representing me and my agent, and my solicitors deemed that was sufficient to make the application. It is very evident that 100 tons would never pay anybody considering that a very large amount of money would have to be found to make it a success. You must have a basis to go upon. It is something to go upon. I do not think there is anything in that.

3983. You merely state you wish to carry out your part of the contract, which is the supply of the whole country?—And I believe that will be a very great advantage to the country, because Bailey and Magee's estimate is that 3,000 people would require to be sent there.

(*Chairman.*) To produce 100 tons?

(*Mr. Bryson Butler.*) No, but you know what is put into a legal document.

(*Mr. Loveday.*) This was the contract which you wished the Volksraad to confirm?

(*Witness.*) Yes.

3984. They refused to cancel your contract and told you to get a contract under the industrial scheme of 1896? The statement made by your lawyers and yourself is that you deserved consideration at the hands of the present Government?—Certainly, I do.

3985. After getting a contract like this, and not carry-

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ing it out for eighteen years, and preventing anybody else under this contract from attempting to exploit the iron in the country, do you still consider you deserve consideration?—I have not had eighteen years.

3986. But the contract has?—The contract has. I have only had from ten to twelve years, and during that time money has been spent and things organised. We have sent men out to examine the Transvaal from end to end as to the best place and the best manner of dealing with iron—where you can get coal of sufficient quality to work that iron, and, also, a place sufficiently central and suitable for people. In that way we have got to a time when time gets on and people say: "Are you aware that it takes two years to put up a furnace like this." You can only tell what it will be with iron-works after they are erected and working. Then there may be another two years delay, because the iron, although it may be very well according to the analysis, and it may be very well in laboratory experiments, it may not do in practical working. It may not be suitable at all, and then you have to move and erect furnaces elsewhere. Eight or nine years is not sufficient. We must have time to turn round. That was one of the reasons why it was essential to get length of time. They said: "Put up your works," but I said, "I cannot get the works up until we have got the time." You have to have two to four years before we know where we are with regard to that. You are putting up a staple industry which will be of great value to the country, but it will be an immense risk. In the first instance, nearly £40,000 was spent by the company, as you will see, in trying to get that made into a hard fact, but time was the great thing against it. We have not had time to work.

3987. That does not remove the fact that this iron industry, or the development of the iron in the country, and the manufacture of iron in the country, has been closed to everybody else for eighteen years?—That can hardly be the fact, because of the Netherlands Railway themselves, besides which there are different founders.

3988. They are bound under your concession to pay 1½d. a lb. on all iron manufactured in the country?—I am quite aware of that.

3989. That is sufficient to close any other factory?—They know that could not stand, and I want to get something that would stand. 1½d. a lb. to the public created such an outcry.

3990. Why did you wait for twelve years?—It is not a matter of waiting twelve years. I have for several years been working and trying to get a fair contract.

3991. (*Chairman.*) Have you put up any factory at all?—No, because it is no use unless you do it properly.

3992. Have you acquired any land?—Yes.

3993. What have you spent?—I could not tell you altogether. I can tell you roughly.

3994. It will not do to put it roughly. We must have the most exact figures?—I will furnish you with the facts with regard to it.

3995. There is no undertaking as to a recognition of your expenditure at all, but if you want it considered you must give evidence of it?—This is my last estimate with regard to the erection.

3996. I do not care about estimates of works you have not erected. I want cash actually spent——

(*Mr. Bryson Butler.*) We will furnish you with exact figures. May I, before you pass on, refer, on the question you were raising, to a letter from the State Secretary, Mr. Reitz, of the 4th March, 1899, in response to one from Mr. Henderson's solicitors, which I would like to read.

(*Chairman.*) That is only the State Secretary.

(*Mr. Bryson Butler.*) Yes, he was the State Secretary.

(*Chairman.*) I know that, but it has nothing to do with it.

(*Mr. Bryson Butler.*) That is for you, sir.

(*Chairman.*) We have the letter before us, but the point is it does not matter what the State Secretary says.

(*Mr. Bryson Butler.*) Surely, the State Secretary's interpretation is of some value?

(*Chairman.*) As against the absolute discretion of the Volksraad it is none at all.

(*Mr. Bryson Butler.*) It is the Executive we are dealing with, not the Volksraad.

(*Chairman.*) No, you are not. The Volksraad has directed this to be done under the scheme of 1896.

(*Mr. Bryson Butler.*) Then I must say, in same way, that the Executive have not carried out the directions of the Volksraad. At any rate, you have a copy of the letter.

(*Chairman.*) Yes.

(*Mr. Loveday.*) This contract is still in existence.

(*Mr. Bryson Butler.*) Yes.

(*Mr. Loveday.*) It has been agreed to be cancelled.

(*Mr. Bryson Butler.*) Yes, on the delivery of the new contract.

(*Mr. Loveday.*) And payment of all the money.

(*Mr. Bryson Butler.*) Yes. That would have been all in shape at the present time except for the unfortunate condition of affairs that we have had.

(*Chairman.*) We will assume now, in your favour, that you would have been absolutely under the control of the Volksraad.

(*Witness.*) Very well, sir.

3997. (*Mr. Ashmore.*) Assuming your contract is recognised, how long would it take to erect iron factories?—Two years from the time you commence. There is an immense amount of work to do. It would be two years, and then you would have the uncertainty of another two years with regard to whether the iron you have got there is sufficient. With regard to the condition of iron, that can only be ascertained by actual working, and that makes it so difficult. Folks are so frightened with a new country they do not know the conditions of. I am certain the advantage to us as a nation, of getting the people there with all the kindred industries, would be of very great moment. I have looked, in acquiring the land, to making a centre, because it is not only the iron, but all that flows from the iron, and the development of the country in that way that I have considered.

WONDERFONTEIN WATER SUPPLY.

Statement put in by Mr. G. H. Goch.

Mr. G. H. Goch.

The concession was granted to the owners of the farm Wonderfontein (*see* Document No. 1), from whom I acquired the water rights on that farm and their concession.

The plans, as required in Article 7 of the concession, were duly deposited by me through my attorneys, Messrs. Haarhoff and Hull, with the State Secretary, on the 23rd February, 1893 (admitted by the State Secretary in Document No. 5).

The Government, influenced by the fact that the Sanitary Board of Johannesburg had taken up the matter of a water supply for the town, withheld their sanction to the plans, and I offered to the town authorities all the rights acquired by me in connection with this source of supply.

A brief review of what became a long struggle may be serviceable.

The Sanitary Board appointed a committee to examine and report upon all the sources of supply, and after investigations which occupied nearly a year, this committee reported in favour of this source of supply as the most suitable. The Sanitary Board adopted this report by thirteen votes in favour and two votes against, and referred the matter to a public meeting. This meeting, in spite of great disturbance and uproar, has on record the approval of the scheme and authorising the necessary

loan to carry out the works subject to the Government approval. An action instituted by the Sanitary Board against several persons for disturbance at the meeting resulted in fines being inflicted by the special Landrost, and disclosure in the course of evidence given that the Johannesburg Waterworks Company had engaged 150 men at £2 each to attend the meeting for the purpose of creating the uproar.

The struggle between the Johannesburg Waterworks Company and the town authorities was continued, the former endeavouring to unseat the members of the Sanitary Board (the chairman of the company, at a meeting of shareholders, stated that £3,000 had been expended for this purpose) without success, but with better results at Pretoria, succeeded in getting the matter shelved. On petition from several thousands of the inhabitants, the Volksraad intervened, and appointed a commission of enquiry. This commission, after investigation of all the various sources of supply, ultimately, after prolonged delay, reported in favour of the Wonderfontein Supply as the most suitable. The Government thereupon instructed the Sanitary Board to submit the matter to a popular vote. The voting was fixed for three days duration in February, 1896, and on the first day after the first few hours it became apparent that bribery was being extensively employed by the waterworks company to secure the defeat of the scheme.

Having no remedy in law other than a fine on the person bribed, I thereupon wrote to the Sanitary Board and to the Government withdrawing my offer on the ground that no fair vote on the question could be obtained by reason of this bribery, and followed this up by filing with the State Secretary, I think, eighteen affidavits duly sworn, testifying to this charge. No action was taken.

On 12th April, 1896, I wrote through my attorneys, Messrs. Rooth and Wessels, to the Government making certain proposals (*see* Document No. 2), and in response the Government laid the matter before the Volksraad (*see* Document No. 3). The Volksraad passed a resolution empowering the Government to enter into a contract with me (*see* No. 4). Meantime I was in Europe preparing to bring the company out, the contract dated October 6th, 1896 (*see* No. 7), being concluded on my behalf by my representative at Pretoria.

The financial group who took the matter in hand sent out engineers and surveyors with the view to basing the scheme on a greater daily supply in accordance with the suggestion made in my letter (No. 2). The Government having been duly informed of the work going on, nevertheless wrote on January 22nd, 1897, approving the plans which I had filed four years before (*see* No. 5), and the security required under Article 16 of the concession was then duly paid (*see* No. 6). Article No. 9 of the concession thus came into operation, which then provided twenty-four months for the completion of the works "in so far that the exploitation can be commenced" if not "prevented from doing so through acts or resolutions of the Government."

Prolonged negotiations then went on with the view to get the Government to extend the time mentioned in Article 9 from twenty-four months to thirty-six months, and in other particulars to amend the contract so as to make the conditions more workable and safer for investors. In spite of urgency being constantly pleaded, the matter was put off by the Government until on 8th November, 1897, the State Secretary wrote (*see* No. 9), asking me "to submit again to the consideration of the Government the plans already approved for the purpose of making amendments and alterations therein." This necessitated a further delay on the part of the Government (*see* Nos. 10, 11, 12, 13, 14, 15, 16). The plan of the altered route, as we understood the Government wishes, were submitted for approval in the latter document and certain definite amendments asked for, which the financial house in London who were to bring out the company required, in order to set at rest doubts about the meaning of certain clauses. These alterations were of an eminently reasonable character, and as we had submitted to serious delay and expense in complying with the wishes of the Government to re-open plans for alteration, we deemed it not unreasonable to expect a ready acquiescence from the Government in the very small alterations we needed, and which investors considered essential. No reply was vouchsafed until March 26th, 1898 (*see* Document No. 17), and this, while agreeing to extend the time mentioned in Article 9 of the concession from twenty-four to thirty-six months, and agreeing to the cash capital of the company being called up by instalments, gave no approval to the plans of the altered route, and declined the minor alterations to the concession which were required by us in the interests of investors.

This brought about a deadlock. Article 7 of the concession is explicit: "No commencement may be made with the execution of these works before in that project those modifications have been effected, as the Government may consider necessary and the written approval of the project has been given by the Government."

The exceeding tardiness of the Government in dealing with the matter submitted to them and the unsatisfactory way in which the wishes of investors had been met caused dissatisfaction to the men who were prepared to take up the business. After vainly waiting communications of a more favourable nature from Pretoria, I returned to Pretoria at the end of 1898.

Having once more arranged with the financiers, I sought to bring about an agreement on an enlarged basis, and made proposals to the Government, *vide* the letter of February 8th, 1899 (see Document No. 18). This resulted in the contract of March 2nd, 1899 (see Document No. 20), by which enlarged works capable of delivering 3,000,000 gallons per day are to be constructed. It necessitated the employment of engineers and surveyors to prepare the plans and sections, and these were set to work without delay after the agreement of 2nd March, 1899, had been signed. At great cost these plans and sections were completed on the lines of the altered route, as I understood the Government desired it to be, but when completed the British inhabitants had commenced their exodus owing to the war scare, and it then seemed quite out of the question to submit the plans or to go further with the business just then. I left the Transvaal in September, 1899, owing to the war then on the eve of commencement and the plans and sections which I had prepared for the works to be carried out under the agreement of March 2nd, 1899, I hand in to the Commissioners, now together with a memorandum showing particulars of the proposed installation under the new agreement I submit a report from Mr. Way, an engineer who caused the flow of the stream to be gauged in the month of October (a time of the year which, after prolonged drought, ensures that the minimum flow of the river has been ascertained), showing that the quantity of the flow allowed under the concession will amount to more than 7½ million gallons per diem as a minimum. The quantity for which my present contract makes provision is 3,000,000 gallons per diem; therefore there is a much larger quantity available than is at present proposed to be dealt with. Should it be deemed necessary by Her Majesty's Government to provide for an installation to deliver a greater quantity, I am ready and willing to enter into agreement for that purpose.

On the farm and immediately below the point where the pumps are to be placed, the river flows along the foot of some cliffs where several rents or holes in the rocks occur, and a vast quantity of water flows into these and disappears into the earth, and before the stream reaches the boundary of the farm, probably one-half the quantity flowing past the point where the pumps are to be placed is lost. By closing up these rents or holes I am in a position to cause a greater flow of water to go down the river than the pumps are ever likely to take out. Hence the supply of water from this source is available without any injury to riparian owners below.

Rights of way over private farms have been duly secured by me. Over proclaimed farms the Government have the right to grant the necessary rights of way. The purity of the water is not questionable, the great fountain rising on the farm within three-quarters of a mile above the point selected for the pumps, and the right secured by me to enclose and protect this from contamination by cattle or other possible causes renders the continued purity of the water in the future certain. No stream is tributary which could bring tainted water from the gold industry into this source.

Thus on the three great points, viz., quantity, absence of riparian complications, and purity, this source of supply stands without rival. As regards quantity the only source of supply which can compare with it is the Vaal River. But as the whole of the gold fields area drains into this river the water is contaminated by the industrial operations of the mining works, involving, as it does, in ever increasing degree, the use of immense quantities of cyanide of potassium, rendering the Vaal River as a source of domestic supply quite unfit, even if this were not to be accounted a danger, then the cost of clearing this turgid water

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from the heavy matter held in suspension involves a most costly installation, and permanent charges for filtration which, according to the experience gained at Kimberley (*vide* Cape Parliamentary Blue Book A, 8, 1888), is equivalent to about 3s. per 1,000 gallons or on the basis of a 3,000,000 gallon daily supply for domestic purposes, requiring, if expressed as capital, a charge of £4,000,000, bearing 4 per cent. per annum on the population served over and above the initial cost of the pumps and plant. Annual cost for pumping will be about the same as that required for the Wonderfontein supply.

The only other source of supply which comes anywhere near for comparison, is that of Steenkopjes. The supply there is quite pure, but the quantity is, if measured in the same dry period of the year, less than half the flow of the Wonderfontein. The river of which the fountain on Steenkopjes is the source flows through the most extensively cultivated area in the whole of the Transvaal, and any quantity taken from thence will cause serious loss to the agricultural farmers who abound on this river, especially as they depend entirely on this water for their agricultural produce during the dry season of the year. The source of supply is moreover far from the railway, and consequently will involve a heavy annual extra charge for transport of coal, which the vicinity of the railway saves in the case of Wonderfontein. The distance from Johannesburg to Steenkopjes being, I believe, about 36 miles, and the nearest point to the railway will probably be about 18 miles.

Mr. GEORGE GOCH, called; and Examined.

3998. (*Chairman.*) To whom was this concession originally granted?—To the owners of the farm at Wonderfontein.

3999. Did you acquire it from them by concession?—Yes; I hold it under contract from them.

4000. This is not a concession which has been sanctioned by the Raad?—It came before the Raad.

4001. Will you give us that concession?—It is document No. 1. There is an Executive Council resolution dated the 24th August, 1896.

4002. That is between the Government of the South African Republic and these various gentlemen?—Yes.

4003. The Volksraad are not parties to that?—No.

4004. There is no resolution authorising that?—No; not at that point. You will find it later on. It is on behalf of the Government, apparently. Later on you will find the Executive Council Resolution, Article 749, dated 24th August, 1896:—"Resolved, to propose to the Honourable Volksraad to make available a certain amount, say up to £20,000, out of the proceeds of the stand licences belonging to the State, for the purpose of covering an eventual short fall of interest of the company, and to enter into an agreement with reference thereto." Then you will find on the next page, "The First Volksraad, having regard to Government missive B.B. 2119 of 1896, together with the Executive Council Resolution *re* the Wonderfontein water scheme, now on the order; further, having agreed to the desirability to provide Johannesburg with pure water, resolves to approve of that Executive Council Resolution and to instruct the Government to enter into a contract with the persons concerned with the view to provide Johannesburg with sufficient and as cheap as possible pure water."

4005. That resolution of the Executive Council is the one you have just read?—That is the actual resolution of the Volksraad.

4006. That approving the Executive Council Resolution refers to the Executive Council Resolution 749?—Yes, that is so. Then I think you will find an agreement was entered into in pursuance of the Volksraad Resolution dated 6th October, 1896, between Dr. William Johannes Leyds, in his capacity of State Secretary of the South African Republic, and, as such, representing the Government of the said Republic, he, the said Dr. William Johannes Leyds, acting in pursuance of Executive Council's Resolution, Article 857, October 6th, 1896, of the one part, and George Hesse, of Johannesburg, in his capacity of general agent for George Goch in pursuance of a general power of attorney dated Johannesburg, 23rd August, 1896," and so on. Then it recites that Mr. George Goch is the owner of the contract dated the 2nd March, 1891, granted to these various people "for the purpose of bringing water from Wonderfontein to Johannesburg, which contract is hereinafter named the Wonderfontein contract."

4007. (*Mr. Loveday.*) This is in connection simply with the £20,000 that is to be given by the Government?—And modifying the terms.

4008. Modifying the price of supply?—The price of supply is mentioned. The guarantee of the Government for £20,000 sterling for short fall of interest and alteration in the capital and various provisions restricting the liability of the Government under the guarantee, and a provision that the company may issue debentures, and then provisions as to what is to be done with the money.

4009. (*Chairman.*) It refers frequently to the first contract?—Yes.

4010. You say that the Raad have impliedly ratified that, if not expressly?—We do say so. Of course, we base ourselves very much on that resolution of the First Raad.

4011. You say when they authorised the £20,000 with the contract before them they must have known it and must have impliedly sanctioned it?—Yes; there was a more direct approval of the Raad in 1893. A petition was presented by the inhabitants of Potchefstroom against this concession or contract, on the ground that the water at Wonderfontein, where it disappears under the ground, reappears and forms the Mooi River. The distance is about 15 miles from where it disappears to where it reappears, and this petition asked the Volksraad not to ratify the contract which the Government had entered into with the owners of Wonderfontein, on the ground that their riparian rights would be affected. The Raad appointed a Commission consisting of three members of the Raad. These gentlemen inquired into the complaints of the petitioners, and had reported to the Volksraad in July of 1893, stating that the complaints of the petitioners were not well founded, and recommending that the action of the Government be approved. That report was adopted by the Raad, I think, on the 19th July, 1893.

4012. Have you got a copy of that?—Yes, I have got a copy of that. I did not hand that in because it did not really affect my own case, but the case on behalf of others.

4013. I suppose nobody but the sovereign authority in the Transvaal would have the power to alienate water to the prejudice of riparian owners?—This is a special case.

4014. Because of its being underground?—Yes; I would contend that the contract made with me by the Government, for which I have given up very great rights which I had, has given me the right to get a right of way over the public ways, which is really all that the first contract amounted to.

4015. You say you did something more. You purchased these springs from the owners of them?—Yes; and when the contract was entered into, the Government only gave a right of way. That is what it all amounts to. They gave a right of way into the towns and along the public roads.

4016. When you say a right of way into the towns, what do you mean?—For the pipes.

4017. That is to say, a right to excavate and put pipes and deliver water and disturb the streets from time to time as occasion might demand?—Yes; that is the essence of the first contract.

4018. That you say the Government would have a right to do?—Yes; so I was advised.

4019. As a road authority?—Yes; so I was advised. Of course, the action of the Volksraad, whatever doubt may have been in existence before, removed it.

(*Mr. Greig.*) I am appearing on behalf of Mr. Goch. We must assume the Volksraad were acting as the supreme power.

(*Chairman.*) The Volksraad could do anything. They were the sovereign authority.

(*Mr. Greig.*) It is not like in this country where you have to get the consent of the local authority. There is another contract later. Various alterations were pro-

posed in the scheme. It was proposed amongst other things to increase the supply, and an alteration in the line of pipes was suggested by the Government. A long correspondence ensued with Mr. Leyds, and finally the Government assented to the alterations. In fact, they suggested them themselves. We sent in new plans, and deposited new plans with them, and a new contract, or, rather, a contract altering the original one slightly, was made on the 22nd March, 1899. That document is No. 20 in the papers before you. That is an agreement entered into between his Honour F. W. Reitz, in his capacity as State Secretary of the South African Republic, and as such representing the Honourable Government of the South African Republic, the said F. W. Reitz, acting by virtue of the resolution of the Executive Council, Article 242, dated 2nd March, 1899, of the one part, and George Goch, of Johannesburg, of the other part." Then it simply alters Article 3 of the contract of the 6th October, 1896, and states that it is necessary to increase the share capital of the intended company, and it makes a slight alteration in the money that was to be deposited, also increasing the quantity of water. Since then war intervened, and we have not pressed further. We ask, of course, that we should have the original time. There was a consent by the Government to extend the time, and we naturally ask to have that extended.

(*Chairman.*) We must have everything you rely upon, because I suppose there are terms in this original concession as to the carrying out of the works within a certain period.

(*Witness.*) Yes.

4020. What section is that?—That is Article 9.

4021. Within twenty-four months of the receipt of the written approval of the Government the concessionaire must have the waterworks completed. How do you get out of that?—You will find the concession requires plans to be deposited with the Government within a certain time, and that was done. Then Article 9 comes into operation within twenty-four months of the written approval of the plans, namely, that the works would have to be completed. Then I explain in my statement of evidence, namely, that the Town Council of Johannesburg, then the Sanitary Board, wanted to start their own municipal scheme.

4022. We must have this with some precision. When did you submit your plans to the Government?—In the proper time—before March, 1893. The concession required that the plans should be deposited, and we deposited them on the 28th February, 1893, within the year.

(*Mr. Greig.*) You will find the original plans were approved on the 22nd January, 1897.

(*Chairman.*) "With reference to your letter of the 11th May, 1896, *re* plans Wonderfontein Water Scheme I have the honour to inform you that the plans referred to therein which should have been sent in by the firm of Haarhoff and Hull have afterwards appeared to have been handed in at this office"—that is Messrs. Rooth and Wessells office—"I am further instructed to inform you that the Government has no objection against these plans, and that herewith they attach their approval of them."

(*Witness.*) Yes, that was on that date, viz., 22nd January, 1897.

4023. You got an approval of those plans on that date?—Yes.

4024. (*Mr. Loveday.*) That was in 1897?—Yes.

4025. Then you contend from that date you have two years?—Yes, on the face of it, but when the engineers came over here to found a company, they found the time was too short. Then we opened negotiations with the Government with a view to extending the time for completing the works.

4026. How did you get out of Section 7, which says "The concessionaire shall within twelve months from date hereof send in to the Government the complete technical project properly worked out with plans and tracings"?—That was done. On the 28th February, 1893, that was done, that letter of Dr. Leyds admits that.

4027. Yes, but it is four years afterwards?—Yes, quite right, but it is not my fault; it is the Government's fault.

4028. Do you mean there was no communication between you after the submission of those plans in 1893 till 1897?—Yes, that is quite right. There was, of course, but the Government wanted the Sanitary Board to have every opportunity to make a municipal scheme, and my rights were submitted to them among about eleven others for them to choose, which were the best for the town. I have given a short sketch in my statement explaining why it took so long for them to decide, and ultimately when the matter was put to the vote by the Sanitary Board, which was in 1896, I withdrew my scheme owing to the irregularities which occurred at the voting.

4029. I remember that?—Then I laid my statement before the Government with affidavits containing the grounds on which I based my action. I heard no more from them for some time, but in April, 1896, I wrote proposing that if they would give the subsidy which they were willing to give to the town I would form a company. This they did under the contract of October 6th, 1896. While I was over here busy forming the company engineers were at work out there again surveying the route and checking the original plans with a view of enlarging the scheme. In 1893 when the plans were first submitted the scheme was on a much smaller scale, the town then not having grown so much. In 1897 the Government wrote to my solicitors about the plans. There was some delay. They could not find them in the office but, apparently, by this letter they recognised that they were there and duly deposited—I mean the original plans. Here we find that the time given in Article 9 of the concession, twenty-four months after the approval of the plans, would be too short a time to complete the scheme on the larger scale on which it was then proposed to carry it out. We then opened communications with the Government with the view of getting that article amended, so that we might get three years instead of two years for completing the scheme. The Government took a very long time to decide and, in spite of all pressure, we could put upon them we could not get them to a decision. In the meantime by a letter written to us in November, 1897, the Government through the State Secretary, applied to us to reopen the question of the plans already approved. I was in England.

4030. I have got that letter, "Before taking into closer consideration your request for an extension of the time for bringing the water supply from Wonderfontein to Johannesburg the Government would be glad to know if Mr. Goch would be prepared to submit again to the consideration of the Government the plans already approved for the purpose of making amendments and alterations therein, such alterations then to be discussed between you and the Government and the Executive Council"?—That is it. This request had been cabled to me here in London, and although we immediately expressed our willingness to submit the plans for consideration we could not get the Government to state what amendments they actually wanted, and it caused a correspondence which extended for a long period of time, which will be found in Nos. 10 to 16 of the documents which I have filed. Then at last the Government replied to us on the questions of time, which we asked for and agreed that Article 9 of the concession should be amended from two years to three years for the completion of the work, but they did not send their approval of the amended plans which we had to file at their own request. Now we were in this position that Article 7 of the concession distinctly states that we dare not go on with the works until the plans had been finally approved, or all such amendments of them as the Government required. Our operations here to form the company were completely checked through the action of the Government in not meeting this question of the amended plans promptly and, in fact, when they ultimately replied to us as to the amendments we required as to time and other little matters which we also asked for, they ignored the approval, which was then again required, of the plans which we had filed showing the amendments which they themselves required, which were very important amendments, because they affected the route of the pipes over which we had paid for a right of way. It involved such delay over here that the time was gradually passing, and financial friends on this side found it impossible to proceed with the work unless the matter were put on a more definite footing.

4031. Because there was this uncertainty as to the approval of the amendments?—And as to the approval of the plans.

4032. And the original approval of the plans?—The original approval was done away with by their amendments.

4033. And you could not get them to specify their amendments with sufficient precision to satisfy your friends here?—No, that is it. We submitted plans on the lines which we understood they wished, but we could not get their written approval to say that that was what they wanted.

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4034. Does that appear from this correspondence?—Yes, you will find all that in sequence in proper order. Then I went out to Pretoria and saw the Government, and arranged with them under the new contract of March 2nd, 1899, that I would construct the company on the basis of a three million gallon supply per diem, provided that they agreed to alter the contract so as to enable me to increase the capital of the company. This was done under that contract I referred you to, and we then immediately set to work with the engineers, and they surveyed the route afresh and submitted, or, rather, were prepared to submit, to the Government the plans on the basis of the new scheme under the contract of that date, 2nd March, 1899. The political question became very serious, and in September I had to leave, because the war was imminent, and all matters were in suspension in connection with the work. The plans which I had completed and intended to hand in to the Government took some time to complete; it could not have been done before September. They were completed in September. That took us six months from March, and I have handed them in to you. That is how the matter stands. There is a special clause in the original contract stating that any action or resolution of the Government causing me delay will not count against me.

4035. Clearly it would not, even if they had not put such a provision?—Still, it makes it all the more definite.

4036. Yes, it is there, as you say——

(*Mr. Greig.*) If you will look at the contract of March 2nd, 1899, you will see evidently they had in their minds this altered scheme, because there is an evident recital, "Whereas it is therefore necessary to increase the share capital of the intended company which is to exploit the concern, for the purpose of being able to pay the increased expenses of purchase and erection of the bigger machinery, pipes, and pump stations, etc."; so in 1899 they evidently contemplated the larger scheme.

(*Chairman.*) Yes. That is the final act in these negotiations, which you say were initiated by the Government for the amendment of the original plans?

(*Mr. Greig.*) Yes.

(*Chairman.*) Then there is a correspondence in which you cannot get them to specify with precision the amendments they required. Then you go in person to Pretoria, and the result of that visit is this contract which specifies the amendments in the plan and the consequential amendments in the concession.

(*Witness.*) The contract does not specify the amendments in the plan. It only deals with the amendments in the formation of the company, but I understood personally what was required by the Government, and could proceed then on the survey.

4037. Then the position is, if these documents are all in order, a valid contract approved by the Raad—whether expressly or impliedly is not of much consequence, but you say expressly—to afford you way-leaves for the pipes necessary to conduct water from Wonderfontein to Johannesburg?—Yes.

4038. Already existing there we have heard in evidence are the Johannesburg Waterworks Company?—Yes, there is a company.

4039. Their position, as they have informed us, is that they have an exclusive right, or rather a right the same as yours, to supply certain water to the central district of Johannesburg. That they put before us as a contract with the Government, and they themselves acquired from the private owners of all the townships which surround the central district the exclusive right of supplying them with water. Did you know that situation?—I know it is what they claim, but I know it is not so.

4040. What do you say is the fact?—They have no exclusive right.

4041. No exclusive right from the Government, but what they claim is that they have by agreement with the private owners of the townships—that is to say, the freeholders of the townships—a grant of exclusive rights from them?—I do not know whether a private contract can over-ride the Government contract with me that I shall have the right over all public roads—that is, to reach every consumer by means of the public roads and streets. That is my position.

4042. All you have got under your contract is the right to put your pipes under the roadways, which I am assuming for the moment are under the jurisdiction of the Government?—Yes.

4043. That would not enable you to put service pipes into the houses except by agreement with the owner?—But there are the stands which we have. The only right they can have to supply exclusively would be an agreement with the owners of private stands.

4044. That is what they claim?—They claim that they should have the exclusive right to lay pipes along the roads.

4045. No, I did not understand that?—Could they exclude me from the streets? That is the point.

4046. I am not putting that. I am putting it in this way: Supposing an owner of a house in one of these private townships, taking it against yourself that they have made an agreement with A. B. that they should have the exclusive right of supplying him in that house. it would not matter if you had a contract with the Government along the road. You could not do that?—No, I could not do that.

4047. I want to know what reason you have for believing or asserting that that company has not got such contracts?—The title of each standholder is perfectly clear of any servitude of that kind except on the private estate of Dornfontein, which belongs to the Waterworks Company, and is their own, and is not on a proclaimed farm, and consequently not under the usual operations of the law giving the Government the right to grant leaves. Dornfontein Farm is an important part of Johannesburg, but is a comparatively small portion.

4048. It is that high part?—Yes, it is under the hills on the east side of that valley, but all the rest, although part of it is on Government ground, where, of course, there can be no question of that kind, is on the Ford and Jeppe Estate ground—Fordsburg and Jeppestown. There is no servitude with regard to any of those stands prohibiting any owner of a stand from getting water to his stand in any way he chooses.

4049. The freeholder, or what we should call here the owner of the soil, has let his stand to private individuals?—Yes.

4050. And you say the tenancy between the owner of the soil and the tenant contains no restrictions?—None whatever.

4051. Therefore the obstacle to such persons receiving the water from anybody they please does not exist?—No.

4052. Provided that person was in a position to lay his pipes along the road?—That is it.

4053. (*Mr. Loveday.*) Is that the view the Town Council of Johannesburg took when they wished to deal with you?—The Town Council of Johannesburg never admitted for a moment that the Waterworks Company had any rights of the kind. In fact, when they did assert that they had some agreement with the owners of Ford's and Jepp's Company Estate to that effect, Mr. Jeppe himself stated that there was no such agreement of exclusive right to them.

4054. They did not claim rights of that kind?—The Waterworks did, but Jeppe's people repudiated such a claim, stating that they did make an agreement with them, giving them permission to lay pipes in the streets, but not an exclusive right, nor did they make any agreement by which their tenants were bound to take water only from them. The field is perfectly open as far as that is concerned.

4055. (*Chairman.*) Has it ever been raised in connection with this subject as to whether a private agreement to grant the exclusive right for the supply of water was an agreement which could be sustained in law? Has that ever been raised in connection with these matters?—No; not that I know of. No individual has raised that matter. It was a claim which was raised, arising, probably in the contest against this scheme, which is perfectly natural on the part of the Waterworks Company, and one of the claims which they boldly put forward in opposition to this to try and prevent this going through.

(*Mr. Ashmore.*) They stated before us practically in the very strongest terms that, with regard to four-fifths of Johannesburg as Johannesburg town is understood, they had the exclusive right, as against all persons, to supply water in what they called the private townships.

4056. (*Chairman.*) That was their case?—Did they file any documents bearing that out?

4057. No, they did not?—It is then the old question which they put forward at the time of the agitation for

the public water supply, and I presume it is still in the same position. They claim it under a contract which gave them a right to lay pipes in the streets on the Ford and Jeppe estates, and Mr. Jeppe stated at a public meeting that they had no such rights.

4058. Their pipes are under the roadways at present?—Yes.

4059. And they are in fact supplying these houses?—Yes.

4060. I am not sufficiently acquainted with the breadth of the streets and so forth, but would it be a practical matter for you to lay pipes, so to say, parallel with their lines of pipes?—Yes. Of course, the concession provides the manner in which I could proceed where I come in contact with other works, such as railways or telegraphs, or anything else, but there is plenty of room.

4061. Of course it is objectionable from a public point of view, as you would recognise, to have the streets taken up for more than one undertaking if it is avoidable?—Yes, I daresay. We find it here in London.

4062. Unless there is necessity?—The necessity, I think, is clear.

4063. Please establish that?—Of course, the Waterworks Company for many years have been found wanting both in quantity and in supply, at every dry season, which comes round regularly every year.

4064. I think I have heard of that, but since they have acquired the Zuurbekom resources, has not that objection been done away with. At present there is not much objection to either the quantity or the quality in Johannesburg?—There would have been no agitation in Johannesburg at all for a new supply of water if they had been satisfied on all points.

4065. That agitation was in 1898 or 1897, was it not?—It was continually going on. In 1897 I think there was a very strong agitation about the supply, both as to quality and quantity. It has been continually going on for many years.

(*Mr. Greig.*) The Sanitary Board itself has reported in favour of this particular supply as early as 1891.

(*Chairman.*) Yes, but the Zuurbekom source is of later origin.

(*Witness.*) Yes, I believe it is a source of wells from which they get the water which is not considered sufficient for the inhabitants. Of course, my scheme goes much further than the town of Johannesburg itself. It proposes to supply the whole of the goldfields from where it commences at the proclaimed farms on the west at Randfontein right along the route of pipes. There are several towns, such as Mariasburg, Krugersdorp, and Florida, and so on right into Johannesburg. We supply the whole district both for industrial and domestic purposes. We do not especially cater for industrial purposes, because the mines would make their own provisions for water, but for domestic supply all along the line it is essential.

4066. To get pure water?—Yes.

4067. Are not they supplied?—They are not supplied in any way. They get it from wells and in all sorts of ways. They scramble for water, and there is a very large district, and the population must be considerable that is quite without water.

4068. Supposing any such scheme as yours was authorised, would you have any objection to coming under what we might call water clauses obligations, such as we have in England; that is to say, obligations to supply, and certain powers to the local authorities to revise prices?—That I have already agreed to in my Concession.

4069. And reasonable expropriation clauses?—Yes.

4070. I am not putting it as necessarily that which is provided for by your Concession?—Do you mean to modify it in any way?

4071. I am not saying it will be done for one moment, but I only suggest it. Would you have any objection, if you did receive this important public right from the new Government, to come under reasonable provisions (making reasonable provision for your profits) on behalf of the public for a proper supply on reasonable terms?—Certainly. If you use the word reasonable, that qualifies the whole thing. It is a matter of agreement as to what would be reasonable under these special conditions, but I am quite willing to consider any scheme which might be necessary in the interests of the public, provided that it does not kill my scheme.

4072. I am not putting a thing which is without precedent, because people with Parliamentary Concessions here have, without any agreement, and very often vigorously resisting, had those Parliamentary Concessions modified by Parliament on terms which Parliament considers reasonable, but which sometimes the undertakers do not. If the terms were reasonable, that is not a proposal you would think objectionable? *Mr. G. H. Goch.* 30 Jan. 1901.

(*Mr. Greig.*) I think we might say that Mr. Goch would be prepared, if desired, to make reasonable restrictions and so on. We would consider them. Of course, we would have to have the opportunity of considering them.

(*Chairman.*) Mr. Goch is in the hands of the Government, and the Government are not in the hands of Mr. Goch; but one does not wish to suggest anything in the least excessive or unreasonable. From what we have heard the concessionaires of water rights and so forth are in a difficult position with regard to recovering money for a supply of water in the courts. You have heard that?

(*Witness.*) Yes.

4073. You would get some advantage in that way?—We would get some advantage in that way undoubtedly. There is much to be done to make the thing quite shipshape in various ways. There is no doubt about that.

4074. (*Chairman.*) Have you got any record of what you have spent on your concession?—My books are kept in Johannesberg, and I have not been in touch with them for more than a year; I have a rough idea only.

4075. What did you give for the rights?—It is in the nature of a contract which runs upon the basis of £2,000 a year, which is to be increased, after a certain time, to £3,000, which is the maximum.

4076. That is the rental?—That is the rental; that is the rate at which I am paying for it since the concession has been granted to me, or at the time it was granted to me.

4077. That is to the owners of the farms?—Yes.

4078. How large is that property; how many farms?—I have no ownership over the farms.

4079. But you get the rights of the farms?—The water rights and a certain amount of ground for putting up the pumps, and the right to enclose the fountain. It was a very important fountain rising from within a mile of where the pumps would be placed; and the right to enclose that, and to keep cattle away, and to keep the water quite pure. Then plots of ground over the caves so as to enable us to take water from underground if that was necessary. Those are roughly the rights that are granted by my contracts.

4080. Are you paying from £2,000 to £3,000 a year?—Yes; it is at present running at £2,000 a year.

4081. Then it rises to £3,000?—Yes; and that is the maximum.

4082. When does it rise to £3,000?—It will in the course of the next year.

4083. Can you give a rough idea of what you have spent?—Yes, generally the expenditure runs in the neighbourhood of £20,000.

4084. In making surveys and so on, I suppose?—In making surveys and all the other expenses connected with it. It has been running for so many years now.

4085. (*Mr. Loveday.*) Does that include the £2,000?—Yes, that includes it. The rental alone comes to nearly £12,000, and the rest has been expended in surveys which had to be done three times really, because there was once a question of the route; and then the acquisition of rights of way over the farms intervening between the intake and where the goldfields and the proclaimed farms begin. That runs over private property, and those I had to acquire by purchase or lease.

4086. (*Mr. Ashmore.*) Is the right to take all the water, or only a certain amount?—The right is restricted to a certain point on the stream which is defined in the concession, and the gauging surveys at that period have been done by engineers. We find the minimum quantity in the dryest period of the year is 31,500,000 gallons in the 24 hours, and that would give us a quarter—say 7,500,000, or 8,000,000 gallons that we could take. The maximum quantity was in the neighbourhood of 54,000,000 gallons just after the rains had fallen. The dry period continues for three months; for the remainder of the year there would be over 10,000,000 gallons for 24 hours available as a minimum.

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4087. (*Chairman.*) Have you estimated at all what population you would have to supply?—We increased it to 3,000,000 gallons. Mr. Hunter, the engineer, who will follow me, will give you technical evidence, and will explain what 3,000,000 gallons would do. We estimate I think 200,000 inhabitants that we would have to supply.

4088. In Johannesburg?—No, that is along the line to Johannesburg. We are also under the concession liable to be called upon to extend to other towns on the east, so that provision should be made for all that. This 3,000,000 gallons I should say is the minimum quantity that ought to be taken in hand just now.

4089. (*Mr. Ashmore.*) No Company has been formed to work it?—No, not yet. We were on the point of bringing out a company, but were prevented by the delays in the negotiations.

(*Chairman.*) What do you suggest the water engineer can tell us?

(*Mr. Greig.*) I will call Mr. Hunter, sir, and just examine him shortly as to the general nature of the scheme.

Mr. WALTER HUNTER, called; and Examined.

Mr. W. Hunter.

4090. (*Mr. Greig.*) Are you a member of the Institute of Civil Engineers, and also a member of the Institute of Mechanical Engineers?—I am.

4091. Are you the Engineering Director of the Grand Junction Water Works Company?—Yes.

4092. And joint Engineer to the Staines Reservoirs Joint Committee?—Yes.

4093. You practice as a consulting engineer in Westminster?—Yes.

4094. Did you in 1897 consider this scheme at the request of Mr. Goch?—I did; I considered it very carefully.

4095. And the scheme includes, I believe, the supply of water to Johannesberg, and also the surrounding districts from Wonderfontein?—Yes, all along the line of the Reef on the Rand.

4096. That lies to the west of Johannesburg?—Yes.

4097. (*Chairman.*) You went out there?—No, I have not been out there myself.

4098. You have seen the plans?—Yes, and gone through the whole of the calculations with regard to the engineering part of the scheme.

4099. (*Mr. Greig.*) The population at the time in Johannesburg was how much?—102,678, as given in the Town Engineer's Report as being the population in July, 1896.

4100. And what was the total quantity of water available at that date per day for the population?—Six gallons, I was informed, as given in the same report.

4101. (*Chairman.*) Available from your scheme?—No, from the existing supply at that time.

4102. That is rather short according to our notions, is it not?—Very short.

4103. You would give thirteen?—For London we should allow about 35.

4104. (*Mr. Greig.*) What was the population upon the mines along the line of the main pipes estimated to be?—That was given to me as being about 100,000.

4105. You have mentioned London as having 35 gallons, but do other towns run up as far as 45 gallons?—Yes; 45 is an excessive supply; 35 is a full supply—anything from 25 to 45 is good, too, but 35 is about a fair average.

4106. (*Mr. Loveday.*) In a warm climate where everybody takes a bath?—Yes, with proper inspection, and proper prevention against waste, I should think it would be enough.

4107. Forty-five?—Ample—I should say 35.

4108. (*Mr. Greig.*) You had before you at the time a resolution passed by the Medical Association of Johannesburg, which was to the effect that any works to be constructed should be based upon the requirement of 4,000,000 gallons daily for the town of Johannesberg?—Yes, I saw a report of that nature.

4109. That was at the rate of about 40 gallons per head per day?—Yes.

4110. On the population in 1896?—Yes.

4111. Taking the supply to Johannesburg at, say, 20 gallons per head per day, what would be the quantity required for household purposes?—The quantity required for 100,000 people would be 2,000,000 gallons daily, and in the mines it was estimated that about one half that quantity would be required—say 10 gallons per head per day, because there are a good many coloured people along the line of the mines who probably would not make such a free use of water as other people would.

4112. Have you also made an estimate of the amount required for manufacturing purposes per diem?—Yes. I think, going carefully into the amount of steam power existing before on the Rand, that probably about 2,000,000 gallons a day are required for manufacturing purposes there.

4113. We know, of course, that Johannesburg has increased very rapidly in population, and that it reached 100,000 in 1896?—Yes, that is right—which was within ten years of its foundation.

4114. And of course, if recent events had not occurred probably the population would have gone on by leaps and bounds?—Probably.

4115. When the scheme was first submitted to you, of course you pointed out that the quantity and quality of the water formed the crux of the enterprise?—I did.

4116. Had gaugings of the water been taken previous to your having been called in to advise?—Yes. I believe gaugings of the water had only been taken at the end of the wet season, but upon my recommendation gaugings were taken in October at the end of the dry season, with the result as shown in Mr. Way's report, which I think you have before you, that about 30,000,000 gallons in 24 hours were passing down the stream, of which one quarter, or 7,500,000 gallons in 24 hours, would be available for water supply under the concession.

4117. This quantity gives a margin of—what?—This quantity gives a good margin upon the 3,000,000 gallons in 24 hours, proposed in the first instance to be taken, and will doubtless eventually allow a further supply from this source when required by the increase of the population.

4118. Has any report been made on the quality of the water?—Yes, by Dr. Kleiner, who is an official—the Government analyst at Johannesburg.

4119. I believe he has reported (we will refer to the report if necessary) that it is of good quality?—Yes.

4120. Have you made any recommendation as to a further test?—I recommended that the water should be filtered as an additional security. I think that all water for domestic purposes ought to be filtered in these days, wherever it comes from, except from chalk or deep wells.

4121. Then I suppose you went into the question of the works necessary for the delivery and distribution of the water?—I did.

4122. And you have arranged the pumping machinery and the pipe line?—Yes, as shown on the drawing marked "A," submitted to the Commission, and described in Mr. Goch's memorandum.

4123. Did that particular plan ever go before the Government?

(*Mr. Goch.*) It is handed in now with the plans.

4124. (*Mr. Greig.*) Generally, what do you say about the scheme?—I am confident that the works as arranged will be ample for the supply of the 3,000,000 gallons daily—the maximum quantity proposed at present to be supplied.

4125. And I suppose you regard the scheme, if it was carried out, as a great boon to the people?—Certainly, from the information which has been laid before me, I am of opinion that the carrying out of the scheme will be a great boon to the area proposed to be supplied, both with regard to the quantity and quality of the water, while the charge for the water will be a considerable reduction upon the price at which the present water is supplied.

(*Mr. Greig.*) That is all I desire to ask. I think, sir, you have Mr. Way's report?

(*Chairman.*) Yes, we have that.

(*Mr. Greig.*) I do not know whether you have got Dr. Kleiner's?

(*Mr. Goch.*) That is the report arising from a Government Commission. All the different schemes were examined by this Commission, and this is a report which they handed in to the Government, of which I have a copy. The original no doubt will be found in the State Secretary's office in Pretoria.

(*Mr. Loveday.*) Was it presented to the Raad?

(*Mr. Goch.*) It was submitted to the Executive Council—they were appointed by the Raad.

4126. (*Chairman.*) Taking the present estimated population of Johannesburg and the district, supposing it was an exclusive supply, what does that work out to per head?—I reckon in the 3,000,000, 2,000,000 for Johannesburg, which would be at the rate of 20 gallons per head per day on the 100,000 population in 1896, and 1,000,000 for the 100,000 spread along the Rand, who I estimate would only take about 10 gallons per head per day.

4127. You do not know about the amount supplied by the existing company?—No, only that in that report to which I refer by the Town Engineer of Johannesburg he gave the quantity at the time at 6 gallons per head per day.

4128. In 1896?—In 1896.

4129. (*Mr. Ashmore.*) Was any estimate of the cost supplied to you?—Yes. I have been through the whole of the estimate.

4130. What does the cost of the supply come to?—I estimated at he time that the cost would be about £508,000, but since then prices have gone up so very much—very nearly 20 to 25 per cent—that the estimate would no doubt have to be considerably modified at the present time.

(*Mr. Loveday.*) This estimate was made in 1897.

4131. (*Mr. Ashmore.*) That estimate is for the provision of one large main?—Yes, a steel main.

4132. Supposing you raised your supply from 3,000,000 to the 7½ millions that you say is available, that main would require to be duplicated?—Yes, certainly, and the engines also. The engines and the mains and the works generally are designed for the 3,000,000 gallons a day, as specified by Mr. Goch.

4133. Is there a large amount of pumping to do?—Yes, it is all pumping.

4134. For a great length?—Yes, there is a long pumping main, about 47½ miles long, from Wonderfontein.

4135. Up to what elevation?—Up to about 1,050 ft., divided into three separate mains with pumping engines.

4136. (*Chairman.*) Which is a very expensive matter?—Necessarily it must be; but water is so valuable over there, that I suppose it is worth doing it. At Coolgardie, in Australia, they are putting down plant with 300 to 330 miles of, I think, 31 inch main, with 20 engines to pump it, at the present moment.

4137. (*Mr. Loveday.*) Does this estimate include pumping through the streets of Johannesburg?—A certain amount of it, and it allows for ten miles of 10-inch pipes, and 10 miles of 8-inch pipes, 10 miles of 6-inch pipes, and 16 miles of 4-inch pipes for distribution works, and with the valves and specials requisite for them.

4138. (*Chairman.*) Are there any places in England in which you have got two water companies supplying water along the same streets?—Only in exceptional instances. In London, for instance, two companies have got mains along the same street, but they supply one on one side of the road and one on the other.

439. We were told that the capital of the existing water company stood at something like £850,000?—The existing Johannesburg Water Company?

4140. Yes. The initial cost of this for the supply of only 3,000,000 gallons must be at least, probably, £600,000, from what you have said?—Yes.

4141. Probably a little more?—Probably a little more.

4142. As a matter of policy, if it could be avoided having two companies for water purposes in Johannesburg, it would be better, would it not?—If the other company is able to supply all the needs of the city, or if any other company is—yes; but, if not—no. A little competition is sometimes good in the public interest.

4143. (*Mr. Loveday.*) Were any calculations submitted as to the cost per annum for delivering this 3,000,000 gallons—pumping it, and so forth?—It was gone into roughly.

4144. What was the figure per annum to deliver 3,000,000 gallons through the system, of which the initial cost was £508,000?—I will endeavour to give that figure.

(*Mr. Ashmore.*) What was the rate you put per 1,000 gallons?

(*Mr Greig.*) 5s.

(*Chairman.*) No, the maximum price is 10s.

(*Mr. Ashmore.*) The present maximum price is 9s. per 1,000 gallons. They charge 10s. less 10 per cent.

(*Witness.*) The income would be £160,000.

4145. (*Mr. Loveday.*) Have you no estimate of the cost of delivering that water per annum, taking it at 3,000,000, because every gallon of it has got to be pumped?—Do you mean the net cost simply, or the pumping.

4146. The cost—the up-keep?—I daresay it would cost £60,000 to £70,000 a year.

4147. And it would return £160,000?—But there is all the capital, the Debenture interest, and so on.

(*Mr. Loveday.*) I am not calculating that. I only want the net cost and the net return.

(*Chairman.*) What is your authorised debenture issue?

(*Mr. Goch.*) Half-a-million.

(*Witness.*) I think the Government share the profit, do they not?

(*Mr. Goch.*) Yes, the Government share 25 per cent. of the profit after a certain amount. After the debentures are paid and the shareholders have got a certain return.

(*Mr. Loveday.*) What is the return the shareholders get?

(*Mr. Goch.*) I think it is 12 per cent.; and then the Government shares in one quarter of the balances, and they have a controlling interest in the company by having two seats on the Board.

(*Chairman.*) And there are expropriation terms.

(*Mr. Goch.*) Yes, there are.

(*Mr. Greig.*) I do not know, sir, whether you desire to hear any remarks from me. We are prepared to leave the case in your hands. Testing the matter by those principles laid down in the notice issued with regard to this Commission, we suggest this was a Concession, and that it was within the power of the Government of the South African Republic, that it was granted with legal authority; that it is not contrary to the law, and that the conditions, so far as we are concerned, have been complied with, and that it does not, looking at it as a whole, affect prejudicially the interests of the Republic. It not only secures a supply of water for the people of Johannesburg, but it contemplates a supply to the main Reefs outside, and the manufacturing industries and the mining industries along there. Therefore, if there is any suggestion of conflict with the existing company that, at least, differentiates our scheme from the existing scheme, which is in operation. In any event, competition is a good thing. Then, as regards the other point that has been raised, that landowners who develop building estates have bound themselves hand and foot to the existing company. Even if they had done so, I suggest that that is against public policy; certainly, as far as we are aware there is no suggestion that those rights, if there have been any such rights granted—have ever been carried into the contracts of the sub-lessees or owners below them, and if such a thing had been done, there would have been a good deal of opposition to it. We suggest, really, there is no foundation for such a suggestion on their part. Having said so much, I do not intend to occupy any longer time, but will leave the case in your hands.

HEIDELBURG AND KRUGERSDORP GAS CONCESSION.

The following letter addressed on Mr. Whitty's behalf to the Political Secretary at Pretoria was put in:—

[Copy.]

Pretoria, 6th November, 1900.

30 Jan. 1901.

To the Political Secretary, Pretoria.

Sir,—On behalf of Mr. Michael Whitty, of 34, Old Broad Street, London, E.C., an American subject, we have the honour to bring the following to your notice:—

On the 19th July, 1898, the Government of the late South African Republic granted to Mr. Whitty a contract for the laying and the maintenance of gaspipes for lighting, power, fuel, and kindred purposes in order to supply and provide gas for said purposes to the mines and the public on certain portions of Government ground and proclaimed goldfields in the districts of Heildelburg and Krugersdorp as will more fully appear from the translation of the said contract and diagram hereunto annexed, which we enclose for your information.

Mr. Whitty was in Europe when His Excellency the High Commissioner published the notice to the effect that holders of concessions, contracts, etc., must appear before the Transvaal Concessions Commission, and as soon as he heard that such a Commission was appointed he came out to South Africa for the purpose of submitting his papers to the Commission, and also wrote by the first outgoing mail to Mr. Holland, the Secretary of the Commission, drawing attention to his contract and stating that he would sail for Cape Town at once. Mr. Whitty lost no time in coming out, and after some delay, occasioned by the necessity of obtaining special passes to go to the Transvaal, came to Pretoria after a somewhat eventful journey, during which our client was captured by the Boers near Ventersdorp station.

When Mr. Whitty arrived at Pretoria, he found that the Commission had adjourned, and he was, therefore, unable to submit his papers as he intended to do, to the said Commission.

We, therefore, on his behalf, beg to draw the attention of Her Majesty's Government to the contract in question, and to request that Mr. Whitty may be allowed an opportunity to submit his contract to the above Commission should such a step be considered necessary by Her Majesty's Government.

We are further instructed to say that Mr. Whitty has been working in this matter for more than four years, having applied for the contract two years before he obtained same, and that he, after obtaining the contract, took the necessary steps to carry out its provisions, but was prevented from doing so by the outbreak of the war.

As soon as business can be resumed, Mr. Whitty intends to take the necessary steps for carrying out the contract. All the conditions of the contract up to the present have been carried out by our client.

We have the honour to be, Sir,
Your obedient servants,
(Sgd.) ROOTH AND WESSELS.

(Two Encl.)

(*Mr. J. Shelford.*) Sir, in this matter I represent Mr. Whitty, and I appear in support of the Concession numbered 310 of 1898—the Gas Concession. Mr. Whitty is the concessionaire. The terms are practically all set out in a contract of July, 1898.

(*Chairman.*) Has this ever been before the Volksraad, or is this the Executive Council only?

(*Mr. Shelford.*) The Executive Council have not had an opportunity during the short time that I have had the papers of verifying the statement, but I am told this is by virtue of a resolution of the Volksraad under Article 871 of the 3rd November, 1896. If there is anything in that point, and it is not absolutely dogmatically settled, perhaps it can be referred to.

(*Mr. Loveday.*) It was an industrial scheme.

(*Mr. Whitty.*) That is so.

(*Mr. Shelford.*) I have been told that there is an authorisation to the Executive Council to make concessions of this kind.

(*Chairman.*) If it is under the scheme of 1896, as Mr. Whitty indicated, it would be submitted afterwards to the Volksraad, who would confirm according to the terms set forth in the scheme.

(*Mr. Whitty.*) I am advised that the Volksraad have nothing to do with this whatever, and that my contract is with the Government direct, because as Mr. Loveday remarked, there is no duty to be imposed on gas; it is not an imported article.

(*Chairman.*) This is simply a contract to carry on a gas industry.

(*Mr. Whitty.*) On the proclaimed goldfields of the Rand.

(*Mr. Loveday.*) This is practically a contract, as I understand it, whereby the Government gave you permission to lay your pipes for the conveyance of gas along the mines.

(*Mr. Whitty.*) That is so.

(*Mr. Shelford.*) An exclusive permission for a period of two years only; after that there is no exclusive right; and that is merely a protection, which is due as much to the public as to Mr. Whitty. As you remarked, sir, in the previous case it would not do to have the traffic suspended and interfered with by two companies at the same time.

(*Chairman.*) The contract provides that there should be a grant to lay and maintain gas pipes, and it shall be only on such a portion of the Government grounds.

(*Mr. Whitty.*) That is so.

(*Mr. Ashmore.*) It says expressly "No exclusive right is granted by this Concession."

(*Mr. Shelford.*) Article 13 gives that exclusive right for two years. No. 13 says, "In order to give the contractor an opportunity properly to erect, the Government promises to grant no similar right to any person for a period of two years, reckoning from to-day." That period of two years has unfortunately expired. It expired during the war, and it is one of Mr. Whitty's submissions that he is entitled to that period of two years which was covered by the war. He has spent an enormous amount of time and trouble upon it, and he has given valuable consideration for it, and done everything he could to comply with the terms; and it was only due to the imminence of the war, in the first instance, and then to the war itself, that he was unable to get the necessary capital to carry out the scheme. He asks, first, that this Concession should be confirmed, and, secondly, that he should be credited with that portion of the two years which is covered by the war, and from the termination of the war.

(*Mr. Loveday.*) Have the plans been submitted?

(*Mr. Whitty.*) I filed the plans, a copy of which you have here.

(*Chairman.*) We had better call Mr. Whitty.

MR. WHITTY, called; and Examined.

Mr. Whitty.

4148. (*Chairman.*) We must hear the reasons for your absence before us in Pretoria?—I had a very rapid journey to try to catch you. You appeared to be almost as nimble as De Wet. I was unable to catch you, although they caught me.

4149. Were you taken prisoner?—Yes, at Geneva Siding.

4150. When you were coming up to Pretoria?—Yes, to appear before the Commission on the 28th October, at half-past 5 in the morning. De Wet sent over some of his contingent from Lindley. They attacked our train at half-past 5 in the morning. After the garrison had surrendered the Boers came down the line and stopped the train. The engine driver was shot in the leg, and we were taken prisoners.

4151. They kept you some time?—It delayed us the whole day on the Sunday.

4152. However, certain obstacles caused you to be too late to appear before us?—Yes, I think I was about a day late. I was delayed at Cape Town when I arrived at Cape Town I found you had gone to Pretoria, and then it took me four days to get the necessary permission from the Government. I followed you as fast as a train could travel, which is only five miles an hour.

4153. You made every exertion you could to get up to Pretoria and appear before us, and were unable, owing to these incidents?—That is true.

4154. Now, this Concession was granted in July, 1898. What steps did you take on receiving the grant?—I came home at once.

4155. First, did you give anything to the Concession?—The terms are there. I have paid £500, and £100 to the Transvaal Government.

4156. Was that under the contract?—Yes; in 1898 I paid £500; and in 1899 £100.

4157. A guaranteed security had to be given for the sum of £500; have you paid that?—Yes, and £100 in 1899.

4158. For the rent?—Yes. I offered £100 to the Colonial Office to accept it on behalf of the Receiver in Pretoria, but I was advised I had better hold it in abeyance until you made your report.

4159. So far as giving security and the payment of obligations under this you have complied with that to the greatest extent that you were able?—Yes.

4160. Have you done anything towards the construction?—I came home at once after getting the concession and approached some financial friends. I was on the point of getting the necessary capital when the political outlook got so dark that I had to hold things in abeyance, and that continued on until the war broke out.

4161. So that you could not form a company?—Yes, owing to the political unrest in the country.

4162. And you have not done anything towards the work of construction at present?—I have not.

4163. There has been no expenditure except that which you have told us?—I have been five years getting this thing into its present position.

4164. Out of the two years mentioned in Clause 13 there would be what left?—About ten months unexpired if the war does not count.

4165. (*Mr. Shelford.*) Of course you would be glad to get the two years—the ten months would not be much good?—No, I should like to get the two years.

4166. (*Chairman.*) You do not refer us to any authority from the Volksraad?—I do not. My authority is from the Executive Council under the advice that they were duly authorised by the Government or by the Volksraad to grant this right or privilege.

4167. Under this scheme of 1896?—I believe that is the resolution on which they worked. Messrs. Rooth and Wessels, of Pretoria, have been my solicitors in this matter, and they advised me it was not necessary to appear before the Volksraad in this matter at all, and that the Executive Council had the power to grant the contract.

4168. You understood that to be under the scheme of 1896?—I do not know positively about that.

4169. But you understood that?—It would have been another resolution, but it may have been the industrial scheme of 1896. That is a copy of the plan I filed with the Government when I got the concession (*handing in a plan*).

4170. I suppose if any recognition was extended to this contract you would only be too glad to have such recognition, even if accompanied by terms which would secure to the public certain conditions from you?—I would be very glad to entertain it and work it in concert with the authorities to carry on the industry. There are some conditions in the concession I would like to have modified in my favour, and possibly there are other conditions you would like to have modified in your favour. I would be only too willing to meet you and to do what I could to act in concert for the benefit of all.

(*Mr. Shelford.*) There are some very strong provisions in favour of the Government in this concession.

(*Chairman.*) Yes, there are many.

(*Mr. Shelford.*) In No. 8, for instance, a certain percentage is to come to the Government. The Government retains the right to increase the 1 per cent. to 2½ per cent. of the net profits, and there is also a provision that the gas works will have to supply the Government with a certain amount free of charge, and then a provision that the Government is entitled to buy up the whole concern on a 7 per cent. basis, which is very severe on the owner. I do not know, sir, whether you wish to hear an argument on the nature of the concession.

(*Chairman.*) We have considered it a good deal. I do not know whether you would like to say anything further to us.

(*Mr. Shelford.*) The only point I have no information at all upon is the authority of the Volksraad. I have not had time to look at the books.

(*Chairman.*) That is the only point?

(*Mr. Shelford.*) Yes. On the question of the nature of the concession it is a perfectly fair one. It is in exact analogy with private acts for gas companies in England, I take it.

(*Chairman.*) The question is as to the jurisdiction of the Executive Council.

(*Mr. Shelford.*) I would like to put in a plea for Mr. Whitty to the effect that, if he was misled in this matter at all it should be taken into account when the Government takes over the responsibilities of the Volksraad, because, if it had the power to rectify this contract possibly the British Government would have that power when it takes its place, and I would submit that it would only be just and equitable to Mr. Whitty that they should rectify this contract. There is no further argument I desire to put before you on that subject.

COCOA AND STARCH CONCESSION.

The following statement was put in:—

To the Commissioners appointed to inquire into the Concessions granted by the Government of the late South African Republic.

The following statement of facts is made on behalf of the South African (Orkin's) Industries Syndicate, Limited (hereinafter referred to as the syndicate), a company incorporated on the 22nd day of March, 1899, under the Companies Acts, 1862 to 1893, and having its registered office at 59, Bishopsgate Street, in the City of London.

Two concessions, dated respectively the 16th July and 22nd September, 1898, were granted by the late Government of the South African Republic to Heyman Orkin, then of Johannesburg.

The said concessions are now in the possession of the syndicate, and three translations of the same into English, notarially certified, accompany this statement.

By the concession dated 16th July, 1898, the late Government of the South African Republic granted unto the said Heyman Orkin the right to erect in the Republic a factory for the manufacture of cocoa, chocolate, and chocolate sweets in or near Johannesburg.

By Clauses 6 and 7 of the concession there was also granted to the said Heyman Orkin and his assigns a 30 years' lease of a portion of Government ground, not more than 10,000 morgen in extent to be selected by the late Government of the South African Republic, and the said Heyman Orkin at a rental of £10 per annum for the purpose of planting cocoa, coffee, tea, cotton, or other tropical productions.

On the 20th July, 1898, Servaas de Kok, the Assistant Surveyor General of the late South African Republic, wrote to the said Heyman Orkin a letter, enclosing a sketch showing the situation of the Government ground let to the said Heyman Orkin by the Government.

A translation of this letter in triplicate, notarially certified, accompanies this statement.

Mr. Orkin.
30 Jan. 1901.

The concession was stipulated to be for 30 years from the date thereof, and to be extended for a further period of 30 years conditional on the said Heyman Orkin fulfilling his obligations thereunder.

The second concession, namely that of the 22nd September, 1898, authorised the said Heyman Orkin to establish within the Republic a factory for the preparation of starch at or near Johannesburg or Pretoria, the place to be first approved by the late Government of the South African Republic.

This concession also was for 30 years, with power to prolong the same for a further period of 30 years, provided the said Heyman Orkin fulfilled his obligations thereunder.

On the 20th of March, 1899, by an agreement of that date between the said Heyman Orkin, of the one part, and Sydney Edward Thorp, of 59, Bishopsgate Street, in the City of London, on behalf of the syndicate of the other part, after reciting that the said Heyman Orkin was the grantee of the concessions before mentioned, provided that the said Sydney Edward Thorp on behalf of the syndicate should have the option of purchasing from the said Heyman Orkin the said concessions subject to the terms and conditions therein set forth.

The said option was by such agreement exerciseable by notice in writing to the said Heyman Orkin on or before the 24th day of March, 1899, and it was provided that the said Sydney Edward Thorp should on behalf of the syndicate pay to the said Heyman Orkin £350 on or before the 24th day of March, 1899, and a further sum of £650 within one month after that date.

The said agreement also provided that on the incorporation of a larger company which was contemplated to acquire the said concessions the capital of which was to be £160,000, that there should be paid to the said Heyman Orkin the further sum of £10,000 in cash, and £35,000 in fully paid up ordinary shares of such larger company.

The option hereinbefore mentioned was exercised, and the sum of £1,000 being the total of the two sums hereinbefore mentioned of £350 and £650, has been paid by the syndicate to the said Heyman Orkin.

On the 21st March, 1899, by an agreement of that date between the said Heyman Orkin and the said Sydney Edward Thorp, it was provided that if the larger company contemplated by the agreement of the 20th March, 1899, was not registered within four calendar months of the 20th March, 1899, the sum of £1,000 hereinbefore mentioned should be forfeited to the said Heyman Orkin, and the agreement of the 20th March, 1899, should be null and void.

On the 3rd day of August, 1899, the said Heyman Orkin agreed to extend the option of purchase of the said concessions for three months from the 20th July, 1899.

Before the expiration of the said extension of three months, viz., the 20th October, 1899, war had been declared between Her Majesty's Government and the late South African Republic, and in consequence thereof it was impossible to proceed with the formation of the proposed larger company to acquire the said concessions.

The syndicate had taken steps towards the formation of this larger company, and as early as June, 1899, had prepared and printed a prospectus of such company.

The larger company not having been formed the said Heyman Orkin on the 30th March, 1900, issued a writ against the syndicate in the Chancery Division of the High Court of Justice, claiming (*inter alia*) a declaration that the before mentioned agreements of the 20th and 21st March, 1899, had been rescinded or put an end to in accordance with the provisions thereof, and delivery up to him of the said concessions.

The syndicate by their defence dispute their liability and contend that the consideration for the agreements has totally failed.

The syndicate respectfully submit that inasmuch as they have already paid to the said Heyman Orkin a sum of £1,000 in respect of the said concessions, and have incurred expenses in and about the formation of the syndicate and the preliminary steps towards the formation of a larger company without receiving any benefit therefrom that the concessions should be confirmed by Her Majesty's Government, or that some recompense should be made to the syndicate for the trouble and expense to which they have been put.

ASHURST, MORRIS, CRISP, AND CO.,
17, Throgmorton Avenue,
London, E.C.;

Solicitors for the South African (Orkin's) Industries Syndicate, Limited.

(*Mr. Shaw.*) In this case, sir, I appear for Mr. Orkin, the concessionaire, and I also represent the syndicate whom you have had a statement of facts from, called the South African Industries Syndicate, Limited, which was a syndicate formed to acquire the Concession granted to Mr. Orkin, and to form a company in England for the purpose of working it. It may be useful if I state very shortly the facts. The first Concession was on the 16th July, 1898, and was granted to Mr. Heymann Orkin, of Johannesburg, and it gives a right to erect a factory for the manufacture of cocoa, chocolate, and chocolate sweets on certain terms. It also grants to Mr. Orkin a lease for thirty years, which was to be extended to another thirty, of a large amount of ground, to the extent of 10,000 morgen, which amounts to something like thirty-six square miles, which is no doubt a very valuable right for the purpose of growing thereon cocoa, coffee, and other tropical products connected with the business that they were being allowed to start.

(*Chairman.*) Where were these thirty-six square miles?

(*Mr. Shaw.*) It was to be allotted subsequently and surveyed. On the 20th July, 1898, there is a letter, which is also before you, from Mr. Servas de Koch, the Assistant Surveyor General of the then Government of the Transvaal, stating:—"Dear Sir,—I have the honour to enclose herewith a sketch showing the situation of the Government ground adjoining the Great Letaba River let to you by the Government in the terms of Minute R. 9035/97. The 10,000 morgen leased to you must be surveyed in accordance with this sketch by the surveyor duly admitted in the South African Republic, and employed by you." Then there is a subsequent letter which has only just come to the attention of the solicitor which has a bearing upon the land, and a translation of which has just been given to me.

(*Chairman.*) Is this the grant of the 16th July from the Executive Council or the State Secretary?

(*Mr. Shaw.*) It is by Mr. Reitz.

(*Chairman.*) Does it purport to be subject to a rectification by the Raad, or to be rectified by the Raad?

(*Mr. Shaw.*) It purports to be an absolute grant.

(*Chairman.*) A grant of a right to erect a factory—no exclusive right?

(*Mr. Shaw.*) No, it is not an exclusive right; but it does provide this, that if the manufacture is carried on to the satisfaction of the then Government and their inspectors, and so on, that they will introduce to the Volksraad a resolution to put on a higher tariff on incoming goods, and in that way it is not an exclusive grant; but it is a grant which they are going to protect.

(*Chairman.*) You are quite entitled to say it is not an exclusive grant, because all they do is to say they will put before the Volksraad, who will have an absolute power in the matter, a proposal that you should have certain differential rates?

(*Mr. Shaw.*) And they do not undertake not to give a right to somebody else to manufacture similar things in the Transvaal.

(*Chairman.*) Is the right any good to you without that protective duty?

(*Mr. Orkin.*) This right guarantees the existing duty, which is already 25s.

(*Chairman.*) What power had they to do that?

(*Mr. Shaw.*) The then Government of the Transvaal had the power.

(*Chairman.*) No, indeed, they had not. The Government of the Transvaal cannot bind posterity. If the Transvaal Government had gone on there was nothing to bind them in the future.

(*Mr. Loveday.*) The Volksraad could have changed it in the following session.

(*Mr. Shaw.*) No doubt, if the Government, as in England, liked to go back on any of the laws that it has set up, or the privileges it has granted, they could not be stopped doing it, because they are the sovereign power

of the country, but if there was the same thing in England it would be taken to be binding on the Government if the Government for the time being had entered into it.

(*Chairman.*) You must think of that in relation to the scheme of 1896. Do you know of that scheme?

(*Mr. Shaw.*) No.

(*Chairman.*) It is a scheme which was promulgated by the Volksraad itself, and that confines the jurisdiction of the Executive Council in a very material manner.

(*Mr. Shaw.*) This Concession purports to be granted under that scheme.

(*Chairman.*) Then it grants absolutely no substantive rights whatever as regards protective duties to this gentleman. All that such a contract can do under this scheme is to give liberty to erect the factory, and for the Government to propose a scheme for certain duties which the Volksraad may or may not entertain.

(*Mr. Shaw.*) That is so. It is no doubt an undertaking which the legislature of the country, if it had continued in the same hands, might have altered eventually, and might not have followed out.

(*Chairman.*) And expressly publicly reserved this right to do so, so that every concessionaire who took a contract with the Executive Council did it with the express notice that, so far as protective duties are concerned, Parliament reserved a free hand.

(*Mr. Shaw.*) That Parliament might go back upon it?

(*Chairman.*) Not go back upon it, but reserve to itself a free hand.

(*Mr. Shaw.*) Refusing to carry out the proposals that the Government had undertaken to put before it?

(*Chairman.*) That is so.

(*Mr. Shaw.*) No doubt that is so.

(*Chairman.*) May I ask whether this contract would be of any value to Mr. Orkin in the absence of any legislative provision as regards import duty?

(*Mr. Shaw.*) Certainly with regard to the land that is acquired under it. There is a very large piece of land let to the concessionaire at a very small rent, and no doubt that would be an exceedingly valuable right. Bearing upon what you were calling my attention to, there is a provision, No. 17, in the Concession:—"The Government reserves the right at all times for public purposes to declare the contract null and void either as regards the whole ground or any portion thereof. This is to be done against payment to the lessee in accordance with taxation by means of arbitration, to be arranged for or improvements effected either to the whole ground or to the portion concerned. The Government thereupon come into undisturbed possession of the ground." So, even as regards the ground, the Government had a right if it liked to go back on the contract to take the ground back uponpaying for improvements. But that I do not think touches the point you were upon with regard to putting on the duty. I was going to call your attention to another letter which is not before you, referring to the grant of the 10th November, 1898, from the State Secretary to Mr. Orkin:—"Honoured Sir,—With reference to the agreement dated 16th July last, made with you, I am instructed to inform you that on the ground marked out in the inspection sheet"—that is no doubt the sheet sent with the other letter—"132 claims and three stands and a water right have been granted"—they had been granted to somebody else apparently—"the highly honourable Government wish it to be understood that you have no rights in respect of the said grants of ground, and that you must submit to the water right." Therefore, when I say it was a grant of thirty-six square miles, there has to be deducted from that 132 claims and three stands; and, at any rate, the Transvaal Government claimed to be entitled to deduct from it 132 claims and three stands. I should doubt very much if they had any right to do it, unless, perhaps, under that clause of the Concession which I have just read to you. The lease of the land only relates to growing things upon the surface. The Government reserves all rights and minerals, and so on.

(*Chairman.*) Does it purport to have been Government ground?

((*Mr. Shaw.*) Yes.

(*Mr. Loveday.*) But this lease practically was obtained under the regulations allowing the Government to lease ground for industrial purposes which was passed in 1896, and was not under the Industrial Scheme.

(*Mr. Shaw.*) With regard to that at the commencement of the Concession the Chief Secretary purports to enter into this document in his capacity as State Secretary of the South African Republic, being empowered by a resolution of the Executive Council, Article 631, dated 13th July, 1898.

(*Chairman.*) That does not carry you any further; that is the Executive Council?

(*Mr. Shaw.*) Yes.

(*Chairman.*) I assume that is always the form, but your difficulty would be to get it further—whether he has jurisdiction, or the Executive Council has got jurisdiction to grant any rights except under this scheme in perpetuity?

(*Mr. Shaw.*) I think that probably is the case—that they had not.

(*Chairman.*) Have you a copy of the Resolution of the Executive Council that is referred to here?

(*Mr. Orkin.*) I think that Resolution authorised the Executive Council to enter into such contracts, and promised such protection.

(*Chairman.*) I do not think it does; but, however, it is not here.

(*Mr. Orkin.*) That is what the whole Agreement is based on—on the Volksraad Resolution to enter into such agreements.

(*Chairman.*) Why is it not here?

(*Mr. Orkin.*) It is mentioned here, and is dated November 10th, 1896.

(*Chairman.*) But that is for the Industrial Scheme.?

(*Mr. Shaw.*) I do not know that we should have a copy of that.

(*Chairman.*) Everybody who relied on a Volksraad title in Pretoria had the Resolution on which they relied as a matter of course. You might as well say you relied on an Act of Parliament, and not produce it.

(*Mr. Shaw.*) I do not know whether we could have got them at the present time.

(*Chairman.*) Yes; there is not the least difficulty about that. I understood the Resolution was only under this Industrial Scheme of 1896.

(*Mr. Shaw.*) I think it must be.

(*Mr. Loveday.*) I think it must be under the scheme of 1896, allowing the ground to be leased.

(*Chairman.*) I suppose under the Concession this grant of land is conditional upon the erection of the factory?

(*Mr. Shaw.*) I do not think it is expressed to be so—it is paragraph 6.

(*Chairman.*) Is there not any period within which you have to build your factory?

(*Mr. Shaw.*) I think that comes under paragraph 7.

(*Chairman.*) "It shall be commenced within six months, and completed within eighteen months"—that has not been done.?

(*Mr. Orkin.*) Yes, I have entered into some arrangement with a firm who have erected buildings.

(*Mr. Shaw.*) The war has interfered with the formation of the Company, and matters have been at a standstill.

(*Chairman.*) You have got from July, 1898, to December, 1899, to begin the contracts and complete it?

(*Mr. Shaw.*) That was the surveying.

(*Chairman.*) No, the buildings shall be commenced within six months, and the same shall be completed within eighteen months of the date of this contract. Supposing there had been no war it would have been completed at the end of 1900?

(*Mr. Orkin.*) I have entered into arrangements with a firm who have placed at my disposal a similar factory which they had, and the building was ready, so there was no necessity to start building. The buildings are still at my disposal to-day.

(*Chairman.*) But that is not the erection of a factory, is it?

(*Mr. Orkin.*) But the buildings are all I want.

(*Mr. Shaw.*) Would not adaptation be equivalent to erection in a case of this sort—if suitable buildings could be found all ready?

(*Chairman.*) If you rely on any Resolutions of the Volksraad we must have them. Everybody else has given them to us; and if you have got any on which you rely

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you must let us have them, otherwise we must take it there are none such?

(*Mr. Orkin.*) When the solicitors drew up the agreement they said they would not want the whole Resolution, but they would mention the Resolution and the date, and that would be sufficient.

(*Mr. Shaw.*) Would you take it *de bene esse*?

(*Chairman.*) We will take the evidence on the footing that the Executive are authorised to make this grant for industrial purposes, and that they are entitled to give power to erect a factory subject to the statutory terms laid down by the Volksraad in the Industrial Scheme of 1896; and unless you displace those two suppositions we shall act on them?

(*Mr. Loveday.*) And as regards the ground in accordance with the Regulations made in 1896 for Industrial purposes. You had better put those Regulations in, if you rely upon them. It is the only place that I know of where they are entitled to lease the ground.

(*Chairman.*) If that is so, then we will take it that there is jurisdiction in the Executive Council to grant the lease, and jurisdiction to grant the power to erect the factories subject to the terms of the scheme; but the terms of that scheme—if you are not familiar with them—I may tell you at once are, to reserve the right of the Volksraad to do anything they please; and therefore, you would be completely in mercy.

(*Mr. Shaw.*) I should imagine the Volksraad would have had the power, anyhow; the Legislature of England no doubt could take away a right granted to any person here.

(*Chairman.*) But it is not the same thing; they expressly reserve to themselves the right of considering a contract which has been made by the Executive Council. It is not the same thing as saying you have the right to make a contract, and we have the right of a sovereign power to cancel it. That is not so, but it is that "this contract shall come up, and we shall adopt it or not as we think fit."

(*Mr. Shaw.*) Not having been made by us, but by the Executive Council.

(*Chairman.*) Now is that any good to you? Does Mr. Orkin or the syndicate think it is?

(*Mr. Shaw.*) If you agree to hear what has happened with regard to this, you will come to the conclusion that it was of value, because there was a syndicate formed in England to purchase these rights, and form a company with a very large capital, which was going to take this thing over, and the company would no doubt have gone through, and Mr. Orkin would have received a large amount in cash and shares, if it had not been for the war. Therefore it must have been a valuable right, or must have been considered to be so by the gentlemen connected with the syndicate.

(*Chairman.*) They may have thought it valuable?

(*Mr. Shaw.*) It was something that business men thought valuable. Then the other concession is a concession for a starch factory, and that is dated the 22nd September, 1898; that is a very similar concession to the other, with the exception that there is no ground. This is merely a right to build a factory for the making of starch.

(*Mr. Loveday.*) Would that be under the same scheme?

(*Mr. Shaw.*) Yes, and this is entered into by the Resolution of the Executive Council, dated 19th September, 1898, so I imagine you would also require to have that Resolution before you.

(*Chairman.*) If it differs from what we have indicated?

(*Mr. Shaw.*) Yes, this is no doubt a separate Resolution.

(*Chairman.*) Yes, but they are probably both under the scheme of 1896. If it is not so you can point that out to us. We will assume it to be so?

(*Mr. Shaw.*) I think it must be under the same scheme as the other; it is a very similar concession, with the exception of this, that as I say, there is no land granted, and no doubt the value of the concession depends upon the Volksraad not altering the protective duties, and the probability that the Volksraad will accept the suggestion which the Executive Council are going to make to it, as to the increase of the duty in case the consumer properly equips his factory, and manufactures starch in the proper way. They no doubt, both depend upon the Resolution of the Volksraad accepting the suggestions put before them by the Executive Council. That, of course, is practically the whole value of the thing.

(*Chairman.*) I want you to know what is passing in our minds about it. Supposing a Volksraad were elected which differed in policy from its predecessors with regard to protection, do you think that any compensation or consideration would have been shown to concessionaires who embarked upon this sort of undertaking?

(*Mr. Shaw.*) I think so, certainly. I cannot say there was anything binding in the Resolution of the Council to grant it, but it certainly would be done in any other country.

(*Chairman.*) Was it done in England when Free Trade was established?

(*Mr. Shaw.*) When England altered to Free Trade from Protection it had not granted any exclusive rights of manufacture.

(*Chairman.*) There are no exclusive rights here you said?

(*Mr. Shaw.*) The Government had not entered into any undertaking that if they would equip factories for the benefit of the country and use materials growing in the country, they would keep up the protective tariff. I should say if, in England, the Government had induced people to go to a large expense in putting up factories which it was thought would benefit the country they would hardly have taken off the protective duty without in some way compensating the people who had entered into these extensive commercial undertakings.

(*Chairman.*) That is why I asked the question, if Mr. Orkin had spent any money on this.

(*Mr. Shaw.*) There has been a considerable amount of money spent.

(*Chairman.*) In promoting syndicates and that kind of thing; but has anything been done towards the erection of this factory at all.

(*Mr. Shaw.*) Mr. Orkin will be able to tell you.

(*Mr. Orkin.*) I went out to South Africa for two years in connection with these Concessions, and I have engaged surveyors, and also engaged an expert, who came from Madagascar, who went out to choose the lands. I went myself with these people, and I came over to Europe in connection with the flotation of these Concessions, and up to to-day I think I have spent a considerable sum—about £7,000 or £8,000.

(*Chairman.*) Have you any figures of that?

(*Mr. Orkin.*) I have not been able to get the figures out. I have not any books about it. It is four years ago now.

(*Chairman.*) I think you had better send in to our secretary, with as much detail as possible, an account of any expenditure that you have actually made.

(*Mr. Orkin.*) Yes, I could send that in detail. It is about £7,000 or £8,000, expended in connection with this.

(*Chairman.*) That includes the value of your own time?

(*Mr. Orkin.*) Yes.

(*Chairman.*) Your remuneration for your time and disbursements.

(*Mr. Orkin.*) Yes, actual cash disbursements for reports and expeditions to the north.

(*Mr. Loveday.*) That is visiting the ground?

(*Mr. Orkin.*) Yes.

(*Chairman.*) As regards both Concessions?

(*Mr. Orkin.*) Yes. I have visited the Concessions with an expedition. Three officers went with me, and a surveyor and an expert, and three kaffirs. That cost us a lot of money alone, and then there were the making of the plans on the ground. The plans have not been delivered yet, because the war came on in the meantime; but they have been got.

(*Mr. Ashmore.*) Leaving the factory out of consideration, you thought sufficiently of the option to take up the land at a considerable price?

(*Mr. Orkin.*) Yes; 27,000 acres of the very best land which I could find for this purpose for plantations.

(*Mr. Ashmore.*) What do you suppose 27,000 acres of land is worth?

(*Mr. Orkin.*) I have sold it for £46,000 to the syndicate.

(*Mr. Ashmore.*) The land?

(*Mr. Orkin.*) All the lands and the rights of the Concessions.

(*Chairman.*) That includes the land and the factory?

(*Mr. Orkin.*) Yes.

(*Mr. Shaw.*) All his rights under the Concession.

(*Chairman.*) Then Mr. Orkin's interest in the Concession is gone.

(*Mr. Shaw.*) There is some doubt about that. There is a law suit pending between this gentleman and a syndicate; I do not want to go into the merits of that here, but I may tell you shortly what took place on the 20th March, 1899. There was an agreement entered into between Mr. Orkin and Mr. Thorpe on behalf of the syndicate and the syndicate took an option to purchase the whole of the rights under these concessions, and it was agreed that £350 should be paid a few days after the date of this agreement—namely, on the 24th March, and £650 should be paid within a month.

(*Chairman.*) To Mr. Orkin?

(*Mr. Shaw.*) Yes, within a month from the expiration of the option. Then the syndicate undertook to form a company with a capital of £160,000, to work the industries, which these concessions related to, and it was agreed that Mr. Orkin should be paid £10,000 in cash and £35,000 in shares in the company.

(*Mr. Orkin.*) £11,000 in cash.

(*Mr. Shaw.*) £35,000 in shares; and he was to be managing director at a salary of £800 a year.

(*Mr. Orkin.*) For six years.

(*Mr. Shaw.*) Then on the 21st March, the following day, there was a supplemental agreement entered into between Mr. Orkin and Mr. Thorpe, and on the same day, or the next day, the syndicate was registered, and the option was exercised to take over the rights by the syndicate, and to form the company, and the money that they had agreed to pay to Mr. Orkin—the £650—was paid to him by the syndicate; and thereupon the syndicate started to get up the company under the terms of the agreement. But, of course, it was a very bad time to float any company with regard to South Africa, and delays took place, and in August of that year, 1899, the time of the formation of the company was extended by Mr. Orkin on certain terms. Before that time had elapsed war had broken out, and, of course, it was then impossible to float the company. In March last year there was a writ issued by Mr. Orkin against the syndicate, and proceedings have taken place in the Chancery Division as to the contract between them, and as to who really owns the present Concession—that is one of the points.

(*Mr. Ashmore.*) Mr. Orkin does not propose to give the company the benefit of the war, but asks for it from the Government.

(*Mr. Shaw.*) I do not want to go into the disputes between them. The Concession belongs to either one or the other of them, and I do not want to express any opinion as to who I consider it belongs to, as representing both parties.

(*Mr. Ashmore.*) It is not an uncommon thing for a British Colonial Government to make a grant of this kind that the Transvaal Government has made for experimental cultivation. I understand cocoa is a thing that probably has never been grown in the Transvaal at all. It is experimental, but the same is not the case with regard to coffee, is it?

(*Mr. Orkin.*) They have a small plantation of coffee, which is very prosperous. In the first three years they grew 3lbs. of coffee on each tree. Tobacco is also grown, and all the different tropical things.

(*Mr. Ashmore.*) Your case is that this is an experimental grant?

(*Mr. Shaw.*) In part it was.

(*Mr. Ashmore.*) It might affect the decision of the Government that has come in if it was a *bonâ-fide* extension of an experimental cultivation. The Government no doubt thought it was for the benefit of the country that an industry of this sort should be established, and if possible, the materials from which the cocoa and chocolate were made should be grown within the Transvaal.

(*Mr. Orkin.*) And they made a further stipulation in the agreement—that I had to use articles grown in the plantations for the factories.

(*Chairman.*) How is that with regard to starch. Are the materials of which starch is made grown there?

(*Mr. Orkin.*) Yes, it is made from maize or rice.

(*Mr. Loveday.*) Do you contemplate covering the whole of the 36 square miles of ground with coffee?

(*Mr. Orkin.*) From the 36 square miles we must choose some part of it that is best suitable. There are some mountains included in that.

(*Mr. Loveday.*) It is not all suitable?

(*Mr. Orkin.*) No, it will be the best parts of it. Then it is also for sugar and cocoa, and everything that is required for the manufacture, and at the same time we should grow coffee. We intended to plant several million trees.

(*Chairman.*) With regard to the starch factory, were you in a position to start at once; do you say you were in a position to adapt certain buildings?

(*Mr. Orkin.*) For a chocolate and cocoa factory.

(*Chairman.*) How soon could you start?

(*Mr. Orkin.*) Any day, the buildings are at my disposal to-day. I can send out machinery. I had arrangements made in Germany and Paris about the machinery, and everything has been done.

(*Chairman.*) As to the starch?

(*Mr. Orkin.*) As to the starch I had two years time to start, and I say the two years has not yet expired.

(*Mr. Shaw.*) It says the building of the factory shall be commenced within 12 months, and shall be completed, and at work within two years. That is from September, 1898.

(*Mr. Ashmore.*) They would not get any cocoa, if they planted it there, for four years.

(*Mr. Orkin.*) Five or six years, but in the meantime I have to import.

(*Mr. Shaw.*) Then with regard to the syndicate, there was a very considerable expense incurred on their part. The company was on the eve of coming out at the time the war was declared. The prospectus of the company was actually printed, and in June, 1899, the prospectus was ready; and a very large expense has been incurred, which I have no doubt the managing director of the company, who is here, will be able to tell you about.

(*Chairman.*) In the statement you make of your expenses will you separate them, and tell us what was due to the cocoa and the coffee, and what was due to the starch?

(*Mr. Orkin.*) Yes, I will give you all the details.

(*Chairman.*) And keep them apart as far as you can.

(*Mr. Orkin.*) Yes, sir.

(*Mr. Shaw.*) Would you like to have a statement of the expenses incurred by the syndicate in the promotion of the company?

(*Chairman.*) Yes, I think so.

(*Mr. Shaw.*) They incurred a very considerable expense, of course, besides paying £1,000 to Mr. Orkin for the option.

(*Chairman.*) Preliminary expenses.

(*Mr. Shaw.*) Yes.

(*Mr. Loveday.*) I would like to have a separate account of the expenses incurred in connection with this lease, because special provision is made in the regulations as to what the compensation should be in case the Government took back the land. It is Article 14 of the Regulations of 1896.

(*Mr. Shaw.*) I do not know whether you would like to ask the managing director of the syndicate anything about the expenses they have incurred.

(*Chairman.*) Can he tell us?

(*Mr. Shaw.*) He can tell us what he considered the value of these Concessions was, and what the public were likely to give for them.

(*Chairman.*) That is very difficult.

(*Mr. Shaw.*) That seems to show the value of the Concessions.

(*Chairman.*) That is the value Mr. Orkin says—what the public would give.

(*Mr. Shaw.*) It seems to me very material.

(*Chairman.*) Perhaps he had better give us the expenses. I do not think we should care about having his estimate of what he thinks the public would think it would be worth. We can judge of that ourselves.

(*Mr. Shaw.*) The fact that it was proposed to launch a

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company of these dimensions to acquire it seems to show, *primâ facie*, in the ideas of business men, that this was a valuable Concession, although no doubt, as you pointed out, it was subject to the protective tariff being altered by a resolution of the Volksraad. It is subject to legislative changes. It must be that.

(*Mr. Orkin.*) I started this on the actually existing duty; I had sugar in the Transvaal, and cocoa could be imported into the Transvaal, the same as it is imported from South America in England; and I could manufacture the chocolate very cheap, and I could sell it at a very high price, and the same thing with regard to starch. That is the basis of this agreement; but even this chocolate and cocoa are articles which are luxuries, and therefore I asked for an increase of the duties, which would give me more protection.

(*Chairman.*) You would ask enough no doubt. Perhaps somebody can give us the disbursements in connection with the syndicate?

(*Mr. Douglas Hammond.*) I am the chairman of the syndicate. Of course, there was the £1,000 paid to Mr. Orkin for the option; and, roughly speaking, we have expended now from £300 to £400. That was expended by the syndicate in the preparation of the larger company. The larger company was actually in print, and was nearly all underwritten, and the Board formed, and everything done. I have not put all that down, but only given you the hard cash expenditure. At the time of the syndicate, when we took this up, we naturally concluded that the Concessions were valuable, and I took opinions myself from our solicitors, who considered the Concessions were in the terms of the Convention, and did not go against it, or I should not have entered into it at all. I was informed, as far as they knew, that the Transvaal Government were perfectly within their rights under the Convention in granting these terms, it being an industry.

(*Chairman.*) Your advice was perfectly sound there.

(*Mr. Hammond.*) If it had not been so we should not have paid £1,000, or gone to any further expense in promoting the big company. At that time the big company was prepared, though not registered; the board was formed and the underwriting nearly completed, when unfortunately—I mean in a commercial sense—the meeting took place between Sir Alfred Milner and Mr. Kruger, and the whole thing was done. We are still ready now, if the Government will grant us these Concessions—we shall have to make a different arrangement with Mr. Orkin, because, naturally, we are not prepared to pay him the same amount now—but if the Government are prepared to grant the Concessions of the land, we think we could work that out, not only for our own advantage, but work it out to the advantage of the Government as well, because we look upon that as valuable land, and under the new auspices of the Imperial Government, we think the land will be worth very much more than it was before under the modified scheme. Any details you want with regard to the expenses I can give you. There is he £1,000 paid to Mr. Orkin, and £300 or £400 in addition, and then a certain amount of commission for placing shares in the syndicate, and I am reminded there are legal expenses which have not been paid yet.

(*Chairman.*) That of which you have been reminded does not include the legal expenses of the litigation?

(*Mr. Hammond.*) No, sir.

(*Chairman.*) It is a painful consequence, but not an incident you seek to charge the Government with?

(*Mr. Hammond.*) No: but it is all part and parcel of these Concessions having been in abeyance.

(*Chairman.*) Those legal expenses are not in that £300 or £400?

(*Mr. Hammond.*) No, I have given you the actual expenses of formation. We look to the Government to do the best they can for us. We have absolutely parted with that money, and paid it in cash.

(*Chairman.*) Mr. Orkin has that £1,000 in his pocket?

(*Mr. Hammond.*) I do not know whether he has got it in his pocket now, but he had it from us.

(*Mr. Shaw.*) I do not think, sir, you have copies of the letter of the 10th November withdrawing these 132 claims. (*Handing in letter.*)

(*Mr. Hammond.*) I think you have copies of both the prospectuses.

(*Mr. Shaw.*) I have some plans showing the details of the scheme and the work that has actually been undertaken. An estimate had been got out for the machinery.

(*Chairman.*) That can conveniently come in Mr. Orkin's figures.

(*Mr. Orkin.*) I was myself in Germany, and I concluded an agreement with regard to the machinery.

(*Mr. Hammond.*) We had gone to work, and even the labels that were to go on the chocolate were prepared.

(*Mr. Shaw.*) I think you will be satisfied this was a Concession that was properly granted for commercial purposes by the then existing Government of the Transvaal, and certain expenses have been incurred both by Mr. Orkin and the syndicate, and also they had a right under these Concessions which were considered to be of very considerable value, and which no doubt would be of very considerable value with regard to the land, and that that is evidenced by the fact that a company was going to be formed with a capital of £160,000, who were going to pay Mr. Orkin £11,000 in cash, and £35,000 in shares.

(*Chairman.*) They had not been subscribed for; that was only in anticipation?

(*Mr. Shaw.*) The capital was actually underwritten at the time; therefore, it seems to show that there was a very considerable value in the option according to the ideas of business men, who do not underwrite capital in companies unless they consider the property that is being acquired is of some considerable value. Under these circumstances I should suggest if this Concession cannot be continued in its entirety, that with regard to the land at any rate it might be confirmed.

(*Chairman.*) It is not a Concession; that is the difficulty for you. It is inchoate.

(*Mr. Shaw.*) It is inchoate subject to the Government of the Transvaal or the Parliament going back on the acts of the Executive Council.

(*Chairman.*) Which they very commonly did, and which they expressly reserved themselves the right to do. I do not think the underwriters knew of the scheme of 1896 any more than Mr. Hammond did.

(*Mr. Hammond.*) I must admit I did not.

(*Mr. Shaw.*) This risk was going to be accepted by members of the public, and Mr. Orkin had a valuable asset which he was going to get money for, and which no doubt he would have got money for if it had not been for the war. If the present Government were to take over these Concessions and the rights and liabilities of the Transvaal Government under these Concessions, they would no doubt be exceedingly valuable. I do not, of course, know what the Government is going to do with regard to the protective duties, but there is nothing immoral or against public policy in protection, and many of our Colonies do protect industries which have been started in the Colonies, and if they were continued by the Government here it would be an exceedingly valuable right, but if, on the other hand, the Government thinks right to annul the rights under these Concessions, I think it would only be just both to Mr. Orkin and the syndicate that they should be compensated in some way for having a right, which they have acquired very properly and fairly for commercial purposes, taken away from them. With those few words I leave the case in your hands. Besides the money and shares that Mr. Orkin was going to receive, he was to be appointed managing director of this company for a space of six years.

(*Mr. Loveday.*) You have laid great stress on the value of the 10,000 morgen or 30,000 odd acres; but the Government retained the right to cancel that simply upon payment of compensation for the actual improvements on the land.

(*Mr. Shaw.*) No doubt. The Government reserves the right for all time for public purposes to declare the right null and void only with regard to the ground.

(*Mr. Loveday.*) Then they are only entitled to compensation for the actual works on the ground?

(*Mr. Shaw.*) No doubt the whole thing is based on the honesty of the Government for the time being.

TWENTY-FIRST DAY.

ALBANY BUILDINGS, 47, VICTORIA STREET, WESTMINSTER.

Wednesday, 13th February, 1901.

PRESENT:

Hon. ALFRED LYTTELTON, K.C., M.P. (*Chairman*).

Mr. A. M. ASHMORE, C.M.G. | Mr. R. K. LOVEDAY.

Mr. BERNARD HOLLAND, *Secretary*.

NETHERLANDS SOUTH AFRICAN RAILWAY (Continued.)

BARON VON ECKHARDSTEIN and Mr. KARL SCHAUER appeared on behalf of the German Embassy.

COUNT BERCHTOLD appeared on behalf of the Austro-Hungarian Embassy.

Baron Eckhardstein and Mr. Schauer.

13 Feb. 1901.

(*Chairman.*) Do you propose to address us, Baron Eckhardstein, or does your colleague?

(*Baron von Eckhardstein.*) Of course, Mr. Schauer knows all the details better than I do.

(*Chairman.*) Do we understand that you represent shareholders distinct from the company?

(*Baron von Eckhardstein.*) Yes, absolutely distinct from the company.

(*Chairman.*) You are dissociated from the case of the company?

(*Baron von Eckhardstein.*) Yes, we are entirely dissociated from the case of the company, and we are simply representing the interests of the German shareholders—a great number of those shareholders who have registered in the so-called Schutzcomite. They are *bonâ-fide* shareholders who we know have no shares of the Transvaal Government which the Transvaal Government sold lately.

(*Chairman.*) Shareholders independent of the Transvaal Government who are represented by the Committee.

(*Baron von Eckhardstein.*) Yes.

(*Chairman.*) And whom you now represent.

(*Baron von Eckhardstein.*) Yes. Perhaps you would allow my colleague to read the report, because that will explain everything to you.

(*Mr. Karl Schauer.*) This is the report: "The 'Schutzcomite' representing the interests of the German and Austrian shareholders of the Netherlands South African Railway Company, has registered 6,836 shares out of a total of 14,000 shares. As only such shares have been registered of which the holders could prove a clear title to their possession before the sales by the late Transvaal Government took place, it is evident that the original holding of the late Transvaal Government (about 5,000 shares) is included in the remaining 7,164 shares."

(*Chairman.*) I do not quite follow that last sentence.

(*Mr. Karl Schauer.*) I will give you the written report.

(*Baron von Eckhardstein.*) Only those shares have been registered in which the holders could prove a clear title to their possession. They have proved that they were in possession of the shares before the Transvaal Government tried to sell, or perhaps actually sold their holding of about 5,000 shares.

(*Chairman.*) Yes, I follow that. What was the date of that?

(*Mr. Karl Schauer.*) May I mention that so far as we know (this is only private information) the Transvaal Government did not succeed in selling more than perhaps 500 shares, but those shares did not come to Germany. They were chiefly sold in Holland. I know the amount which has been registered in Holland, but the "Schutzcomite" have nothing to do with the shares registered in Holland, and we have nothing to do with the Transvaal Railway Company, and we have nothing to do with the late Transvaal Government. Those shares I will prove later on, and you will see it from our report, have been held in Germany for about the last four or five years. "The timely formation of the 'Schutzcomite' has frustrated the endeavours of the late Transvaal Government to sell any shares in Germany and Austria, because the would-be buyers had no chance of having their shares *certified as bonâ-fide property.*" I will explain that to you. For instance, in Berlin some one comes to the Stock Exchange and wants to sell Transvaal shares, and the man who is going to buy them will inquire first, "Can you prove that those shares did not belong to the Transvaal Government, or I am not going to buy those shares. I do not want to have my rights forfeited."

(*Chairman.*) Did what you call the "Schutzcomite" instruct the brokers to make such inquiry before they dealt in the shares?

(*Mr. Karl Schauer.*) Yes, I told you the "Schutzcomite" made it public that from a certain time there could only be dealings in registered shares, or certified shares as we call them here, and those shares were only certified whose origin could be proved—I mean as *bonâ-fide* shares, and as not coming from the Transvaal.

(*Chairman.*) The "Schutzcomite" advertised that fact?

(*Mr. Karl Schauer.*) Yes, they advertised that fact.

(*Chairman.*) And practically rendered the other shares unsaleable.

(*Mr. Karl Schauer.*) Yes, and they are unsaleable.

(*Chairman.*) In the German market?

(*Baron von Eckhardstein.*) Yes, they are absolutely unsaleable, and have been for a long time.

(*Mr. Karl Schauer.*) Since the beginning of December.

(*Chairman.*) Do you say that was in consequence of the formation of the "Schutzcomite"?

(*Mr. Karl Schauer.*) Yes.

(*Chairman.*) And the publication of the advertisement.

(*Mr. Karl Schauer.*) Yes.

(*Chairman.*) They were not unsaleable before?

(*Mr. Karl Schauer.*) No, certainly not. They have been for a longer time saleable in Amsterdam, but not in Berlin. At the same time the quotation on the Stock Exchange was ordered to be a quotation for certified shares.

(*Chairman.*) By whose authority was that?

(*Mr. Karl Schauer.*) By the Government—by the

Baron Eckhardstein and Mr. Schauer.

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Bourse or Stock Exchange Committee. The Stock Exchange there is a kind of Government institution, and the Government has the right to control that, and the "Schutzcomite," as we know was partly formed on behalf of the Government.

(*Baron von Eckhardstein.*) Of course, it was formed on behalf of the German Government. The German Government advised them. As we told them, the German Government could do nothing for the Netherlands Railway, and could only support the interests of our German investors. Then the German Government advised the principal people and the banking firms which had specially to do with the Transvaal shares to form the "Schutzcomite" and to register the shares.

(*Chairman.*) This procedure you have just outlined was undertaken at the suggestion of the German Government?

(*Baron von Eckhardstein.*) Yes, at the suggestion of the German Government in order to protect the German *bonâ fide* shareholders.

(*Chairman.*) I quite see.

(*Mr. Karl Schauer.*) "The Netherlands South African Railway Shares have always been considered as a well secured investment, and the bankers could safely recommend them to their clients, pointing out the conditions for the re-purchase laid down by the late Transvaal Government." I will come back to that later on. "The stationary price during the last four years proves best the nature of this share as an investment commodity." Besides that, it proves that the Transvaal Government did not sell its 4,000 or 5,000 shares before that time because that would have influenced the price considerably. The shares are not shares, like here, of £1, but the value of the shares might be and has been at a time £215. It is not easy to sell a few thousand shares at £215.

(*Chairman.*) You mean by that there was no sudden unloading.

(*Mr. Karl Schauer.*) No, there could not have been, because the price would have been affected.

(*Chairman.*) The price has been stable?

(*Mr. Karl Schauer.*) Yes. The average price during this period, that is to say during the four years, was 230 per cent. Then the report goes on: "The average price during this period was 230 per cent., and it may safely be assumed that the present German and Austrian shareholders paid this average price for their holdings." During that time people who wanted to invest had to pay about, let us say, between 220 and 240. According to the valuation "the price of the shares was only little affected by the outbreak of the war, and on June 5th, 1900, the official quotation was 224 per cent."

(*Mr. Loveday.*) What do you mean by that 224 per cent.?

(*Chairman.*) You mean 124 premium.

(*Mr. Karl Schauer.*) Yes.

(*Mr. Loveday.*) You mean 224 for the share itself.

(*Mr. Karl Schauer.*) No, you cannot say that. It would mean 224 for 100 per cent.

(*Mr. Loveday.*) That is 124 per cent. above par.

(*Mr. Karl Schauer.*) Yes. "From July, 1900, until February, 1901, there were comparatively small dealings in Netherlands South African Railway shares, as the price had to be kept down on purpose to prevent any selling on the part of the agents of the late Transvaal Government." Now, I will give you some private information which I did not put down in my report. The Transvaal Government tried first to sell some shares in Berlin, and did not succeed in doing so. Then they tried to sell the shares in Paris, and in Paris there was actually a syndicate. I do not know whether they have already taken the shares or what they have done with them, but the syndicate tried to sell Transvaal shares in Berlin, and the limit must have been something near 170. As they knew that in Berlin they kept the price down.

(*Baron von Eckhardstein.*) That was done on purpose.

(*Chairman.*) To spoil the Parisian deal.

(*Baron von Eckhardstein.*) Yes, and that was the reason they were kept so low.

(*Mr. Karl Schauer.*) Then at the same time everybody knew it was dangerous to deal in Transvaal shares because the registration list had not been closed. For instance, if you were a shareholder you would send in your application for registration of your shares, and this list of registration has only been closed last week. Since that list was closed, there was a certain feeling of greater security in the market, that is to say, people knew quite well that there could not be any danger that those shares in which they were dealing were all *bonâ-fide* shares. Then this report goes on to say, "As soon as the 'Schutzcomite' had closed its lists the public began to buy the now-called 'certified' shares." You see an investor could not come forward, and the investors kept aloof from the market, but now, as soon as that list has been closed, dealings began, and the price has risen in consequence. Do you follow?

(*Chairman.*) Yes. Of course the French syndicate shares were not registered?

(*Mr. Karl Schauer.*) No, they are not registered. We have got a list of the shareholders.

(*Chairman.*) Will you send it to us at your leisure?

(*Baron von Eckhardstein.*) Yes, I will post it to you.

(*Chairman.*) Of course, all the more formalities of proof you can give us of what you say the better.

(*Baron von Eckhardstein.*) Certainly.

(*Chairman.*) Although we, of course, quite believe what you say, you will quite understand the more formal proof we have the better.

(*Baron von Eckhardstein.*) I quite understand. I have at the Embassy a list of the shareholders, and I will post it to you to-night.

(*Mr. Karl Schauer.*) I will give you my report, and if you want to make any inquiries I am always at your disposal. "By forming the 'Schutzcomite' the German and Austrian shareholders have not only successfully prevented the late Transvaal Government from selling any more shares, but have also assisted the British Government in tracing the *bonâ-fide* owners of the Netherlands South African Railway Company shares." Now you know exactly who is a *bonâ-fide* shareholder. You know that we in Germany and Austria have about 6,836. "The German and Austrian shareholders therefore trust that His Majesty's Government will, in consideration of this prompt and energetic action, see its way to take over the shares at the same price at which its predecessor, the late Transvaal Government, obligated itself to buy them back, *i.e.*, twenty times the average dividend of the last three years." The average dividend is 12·417 per cent. That makes 248⅓ per cent., plus 1 per cent. for each year before the 1st of January, 1915, making 16 per cent., making altogether 264⅓, at which price the late Transvaal Government obligated itself to buy the shares back.

(*Chairman.*) Yes, we are quite aware of that. Do you say the total claim that you now wish to put before us as the claim of each shareholder is 248?

(*Mr. Karl Schauer.*) 264⅓ per cent. You will see the exact figures in the report. That is in accordance with the stipulations laid down by the late Transvaal Government.

(*Chairman.*) Each £100 share is 264⅓.

(*Mr. Karl Schauer.*) You cannot call them £100 shares. They are 1,000 guilders. There is one very important point here. "The timely formation of the 'Schutzcomite' has frustrated the endeavours of the late Transvaal Government to sell any shares in Germany and Austria, because the would-be buyers had no chance of having their shares certified as *bonâ-fide* property. Only last week the 'Schutzcomite' has refused the registration of some thirty shares because they were suspected as coming from friends of the late Transvaal Government." You see they tried last week or perhaps a fortnight ago to sell some shares.

(*Chairman.*) What steps did the Schutzcomite take to investigate the *bonâ-fides* of the shareholders?

(*Mr. Karl Schauer.*) They asked the people who presented their shares to show them the contracts to see at what time the people had acquired their shares.

(*Chairman.*) What are the limits of time between which these shares which I may call the German and Austrian group were acquired?

(*Mr. Karl Schauer.*) According to my investigation the bulk of those shares must have been acquired during the last four years.

(*Chairman.*) From what source do you gain that knowledge?

(*Mr. Karl Schauer.*) That is from information I have got from Berlin—from private information, and I can prove that because you can always follow the dealings

on the Stock Exchange. You can know in exactly how many shares they have dealt there.

(*Chairman.*) Do you mean that somebody can satisfy himself by the books of the brokers?

(*Mr. Karl Schauer.*) Yes, and the Schutzcomite has satisfied itself.

(*Chairman.*) You say that as representing them?

(*Mr. Karl Schauer.*) Yes, as a representative, and if you knew the firms which formed the Schutzcomite—they are the first firms in Germany.

(*Baron von Eckhardstein.*) They are the chief firms. They are firms like your principal firms here.

(*Chairman.*) Do they instruct you to state that they have investigated every case?

(*Mr. Karl Schauer.*) Every case, and they never would have accepted one registration if it had been doubtful, and the proof is that only last week the Schutzcomite has refused the registration of some 30 shares.

(*Mr. Ashmore.*) As a matter of fact I suppose that in practice all these shares are bought and sold on the Stock Exchange on what is called a bought and sold note?

(*Mr. Karl Schauer.*) Yes.

(*Mr. Ashmore.*) That is signed by both parties?

(*Mr. Karl Schauer.*) Yes.

(*Mr. Ashmore.*) If you buy shares they present you with a note you have to sign?

(*Mr. Karl Schauer.*) Yes.

(*Mr. Ashmore.*) I presume those bought and sold notes are dated and can be produced?

(*Mr. Karl Schauer.*) Yes, they can be traced. They must have been presented to the Committee or else they could have accepted those 30 shares too. Why should they have refused those 30 shares if they had not had the proof? The fact is that I got a telegram from them where they say: "We closed the list because somebody is trying to smuggle in 30 shares."

(*Chairman.*) Do you know the articles of association of the Netherlands Company?

(*Mr. Karl Schauer.*) Yes, partly, I know them.

(*Chairman.*) May we take it that those articles of association contained the usual terms giving to shareholders the power to elect directors.

(*Mr. Karl Schauer.*) Yes, I should think so.

(*Chairman.*) If you could show by reference to the documents that the shareholders were in a different position in this company to what they ordinarily are, it might be important for you, but you do not suggest there is any such difference. From your recollection of the document you would say that probably the shareholders have the ordinary powers to attend meetings and to appoint directors and elect them and so forth?

(*Mr. Karl Schauer.*) Yes, but it is difficult to answer that question. As far as I know, the shareholders were in a very difficult position. The shareholders were in Germany and in Holland. The company was out in South Africa and the directors, or most of them, were also there, and really the German shareholders and the Austrian shareholders had no great power to control the directors.

(*Baron von Eckhardstein.*) We are not going to emphasise the legal aspect of the case, but at the same time the very moment that Article 22 was exercised by the Transvaal Government, then the shareholders in Germany had not the slightest control. They absolutely lost every control over the directors. How could they have any control? You could not even communicate, because the Transvaal Government simply said, "From now we exercise Article 22, and you now have to do what we tell you to do." That is what they said to the officials of the railway. How could they influence them? They could not even send telegrams and they could not write. That was the reason why the Schutzcomite has been formed, to assume quite an independent position.

(*Chairman.*) Yes, I quite understand the statement you have made, but in the ordinary course if you invest in a concern which is carried on thousands of miles away from your home you do, more or less, resign yourself to the control of those whom you appoint to control it, and if they misbehave *primâ facie* I do not suppose anybody would deny that you are responsible for their misbehaviour, however innocent you may have been of it. Is there anything in the constitution of the company which you would desire to bring before us as negativing or modifying that ordinary principle?

(*Mr. Karl Schauer.*) We have only got Article 22. There is nothing else as far as we know, but we can look through it again.

(*Baron von Eckhardstein.*) Article 22 is the only article I know.

(*Mr. Karl Schauer.*) It is not the same in Germany as it might be in England. Here in England most shares are £1 shares, and therefore your public really takes a greater interest in shares than they do in Germany. In England it is easier to buy, and a man rather buys 100 £1 shares than in Germany one Netherlands Railway share of 1,000 gielders nominal. This proves that only investors could afford to buy the railway shares, and in fact the 6,836 shares were all held by the investing public. The investor himself comes forward as a buyer when he has sufficient confidence in the issuing firm. As the firms who brought out the Netherlands Railway shares were among the best firms in Germany the shareholders had great confidence in them, and he did not inquire about the articles of association or about the constitution of the company, and all those things. He simply believed in the two issuing firms, and, knowing that the Stock Exchange had sanctioned the prospectus before the shares could be dealt with in the market, the investor was satisfied, and never worried about what was going on out there, and he never thought that the directors might do anything wrong. As soon as the shareholders saw that the directors' behaviour was not approved by the British Government they formed that Schutzcomite, and they stood up for their rights. That is what they did, and nothing else.

(*Chairman.*) There was a general meeting we know took place in June last year of this company in Amsterdam, and a report of the history of the last year in the usual course was made and was read, and I presume laid on the table afterwards, and we were told each shareholder had a copy if he desired it.

(*Mr. Karl Schauer.*) Yes, if he desired it; but I do not think many of them did desire it.

(*Chairman.*) Were the Schutzcomite or any of the shareholders whom you represent present?

(*Mr. Karl Schauer.*) No; and I will tell you why. At that time it was not necessary. We had no Schutzcomite at that time, and you had not then objected to the behaviour of the company at all.

(*Chairman.*) Do you put it that none of the shareholders ——

(*Mr. Karl Schauer.*) None of them knew that you were not satisfied.

(*Chairman.*) Did none of the shareholders receive that report in the ordinary course? We were told they all received it.

(*Mr. Karl Schauer.*) No, I do not think so. I do not think the company is likely to send out a report. The shareholders are not registered. A report might have been issued and published in the papers, but they cannot go and send the report if they do not know the shareholders. It is different in England, where the shares are registered.

(*Chairman.*) These are bearer shares.

(*Mr. Karl Schauer.*) Yes.

(*Chairman.*) Of course every shareholder, whether he is a bearer shareholder or a registered shareholder, would have a right to attend the meetings.

(*Mr. Karl Schauer.*) Yes, but he cannot go to Amsterdam to attend a meeting.

(*Chairman.*) Not unless he is there already.

(*Mr. Karl Schauer.*) Yes. Of course, if the shareholders had known at that time, or had only suspected that there would be something said, or that you had something to say against the directors, they would have formed a Schutzcomite at that time, and would have been represented by the Schutzcomite at that meeting.

(*Mr. Ashmore.*) Is it, as a matter of fact, the case that the German shareholders were not represented by any directors on the Board?

(*Baron von Eckhardstein.*) Not as a body. Of course, there may be a German on the Board. There was a German by birth, but he had nothing to do with the German shareholders. The German shareholders were not represented as a particular nationality.

(*Mr. Karl Schauer.*) If they had been represented according to the proportion of their holdings there would have been perhaps three or four German directors

Baron Eckhardstein and Mr. Schauer.

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on the board. It is not like it is here. Here you look after your representatives, and see that you are properly represented, but it is not the same in Germany.

(*Chairman.*) Who were the issuing houses?

(*Baron von Eckhardstein.*) Robert Warschauer and Co. and the Berliener Handelsgesellschaft.

(*Chairman.*) Was a large quantity of shares issued by those houses first of all four years ago on the German market?

(*Mr. Karl Schauer.*) It is longer than four years ago.

(*Chairman.*) These are the shares that were so issued, and have since passed from hand to hand in Germany.

(*Mr. Karl Schauer.*) Yes, I may be able to trace how many shares they issued, but that is already made out in this report. You will find that in my report where I speak about the average price. I think the holding during the last four years was about 7,000 shares in Germany, and perhaps I am able to prove that through the interest which had to be paid.

(*Chairman.*) That interest would be paid by the issuing houses.

(*Mr. Karl Schauer.*) Yes, it would be paid by the issuing houses, but sometimes it might have paid the shareholders to send their coupons to Amsterdam, and to have them paid in Amsterdam on account of the difference in the price of the cheque, so that that would be misleading.

(*Chairman.*) It might not be quite accurate.

(*Mr. Karl Schauer.*) That is so.

(*Mr. Ashmore.*) Of course, if the British Government were disposed to recognise these shares, this Schutzcomite would place at the disposal of anybody that the British Government might appoint to look into the matter all the information they had?

(*Mr. Karl Schauer.*) Yes, certainly.

(*Chairman.*) Can you tell us what the occasion was of the formation of the committee?

(*Mr. Karl Schauer.*) I think when the reports of your inquiry at Pretoria came out, and when it became known that the Transvaal Government tried to sell their own shares on the Continent.

(*Chairman.*) You could not give me the date of that?

(*Mr. Karl Schauer.*) Oh, yes, we can give you the date of the formation of the Schutzcomite. As far as I remember it was in November.

(*Mr. Ashmore.*) They must have issued an advertisement?

(*Mr. Karl Schauer.*) Yes, there is an advertisement.

(*Chairman.*) It is always better that strict proof should be given to us so far as you can give it to us, of each step.

(*Mr. Karl Schauer.*) Yes, I quite understand that.

(*Chairman.*) That is to say, when the committee was formed, and the advertisement that was issued in order to collect the body together, and what the occasion of it was, that is to say, what was the reason which purported to be given for the formation of it.

(*Mr. Karl Schauer.*) I thought you had those dates.

(*Chairman.*) We have nothing at all relating to these matters.

(*Mr. Karl Schauer.*) I would have given you any explanation. This is only a kind of commentary to the shareholders' list, which we give you here, but I am ready to answer all those questions.

(*Chairman.*) If you could give it to us in writing we need not put you to the trouble of coming again.

(*Mr. Karl Schauer.*) Certainly, if I know what you want.

(*Chairman.*) We want any document which shows when and for what reason the committee was convened. Would the notice which convened the committee be in consequence of a notice to all the shareholders, or how would that be, or were certain important people only called together?

(*Mr. Karl Schauer.*) Certain important people were called together—perhaps the principal shareholders met in Berlin, and said we are going to form a committee, which might bring our case before the Government. They told them they might do something to protect their interest.

(*Chairman.*) Show me that first.

(*Mr. Karl Schauer.*) Very well.

(*Chairman.*) And then the proceedings consequent on the formation of the committee—whether the shareholders were notified, and what advertisement was sent.

(*Mr. Karl Schauer.*) Yes, I will give you the copy of the advertisement.

(*Chairman.*) And then any public notice of what we should call the Stock Exchange Committee as regards a quotation, and as regards the regulation that only registered shareholders should be dealt with.

(*Mr. Karl Schauer.*) Certainly.

(*Chairman.*) Then we should like to know precisely the steps which were taken, and we should like to have any documents which exist showing the steps which the committee took to ascertain the *bonâ-fides* of the shareholders.

(*Mr. Karl Schauer.*) Certainly.

(*Chairman.*) On what ground do you understand that these thirty shareholders' shares were refused?

(*Baron von Eckhardstein.*) Because they were suspected of coming from friends of the Transvaal Government.

(*Chairman.*) Was it nothing to do with the price at which they were offered?

(*Mr. Karl Schauer.*) No.

(*Chairman.*) Or the date at which they were acquired?

(*Mr. Karl Schauer.*) It might have been that they were offered at a low price, or something of the kind. They might have come from Holland, and that might have caused suspicion.

(*Mr. Ashmore.*) I suppose, in fact, the Schutzcomite must have specified some conditions which were to be complied with?

(*Mr. Karl Schauer.*) Of course, they did so.

(*Chairman.*) They were in writing probably, and probably you could get them for us.

(*Mr. Karl Schauer.*) Yes, certainly. I will give you all the details. I thought you would have those already or I would have brought them with me.

(*Chairman.*) No, we have no details at all.

(*Mr. Karl Schauer.*) You would like to know how they found out about those 30 shares?

(*Chairman.*) Yes.

(*Mr. Ashmore.*) As I understand, before the war broke out these shares were worth what you call 230 per cent.

(*Mr. Karl Schauer.*) Yes, that was the average price, and then in June—that is, eight months after the outbreak of the war—the shares were still quoted at 224 per cent., because the owners of the shares thought that the British Government would take the shares back on the same conditions at which the late Transvaal Government would have paid.

(*Baron von Eckhardstein.*) 230 is about the average price.

(*Mr. Ashmore.*) And you now ask the Government of Great Britain to pay you 40 per cent. more than that.

(*Baron von Eckhardstein.*) We only state the conditions on which the Transvaal Government had to buy these shares back, and the Germans think that you, the successors or the heirs of the Transvaal Government, ought to fulfil the conditions laid down by your predecessor.

(*Mr. Ashmore.*) The Transvaal Government could have gone into the market and bought these shares for 230.

(*Mr. Karl Schauer.*) And you could have done the same.

(*Chairman.*) I think the distinction is sound. Of course that expropriation clause contemplates the dissolution of the company, and it contemplates something should be paid to you for what we call "good-will," and it represents that appreciation of the purchase price. The face value of the shares represents really the price of compulsory appropriation. That is the difference between the prices.

(*Mr. Karl Schauer.*) Let me draw your attention to the fact that in 1871 the Alsace-Lorraine Railways, which were all private railways, were in the same position as the Transvaal Railway and the holders of those shares were paid in full.

(*Chairman.*) Forgive me for saying they were not in

quite the same position. I daresay they were in the same position as regards domicile and so forth, but, so far as I know, there has not been any case in which German or English subjects have been commandeered by their own consent to fight against Governments friendly to themselves.

(*Mr. Karl Schauer.*) I do not know that, but I can only tell you what the shareholders thought in Germany.

(*Chairman.*) You would not, and I am sure the Baron would not, deny that a German cannot be compelled by a Dutchman to take part in belligerency against a friendly power.

(*Baron von Eckhardstein.*) A great many were absolutely commandeered. They had no choice. They either had to take up arms or they were shot.

(*Chairman.*) That is *vis major* if that be so.

(*Mr. Karl Schauer.*) You mentioned before that you could have bought the shares at 230, but, as soon as anybody else had notice you were buying them they would have gone up to 260 and 280. That is the difference, and the difference in the price also represented the uncertainty which existed about the shares. In Germany they do not know at what time you will pay them for their shares, and meanwhile they have lost about 12 per cent. in dividends. You must not forget that.

(*Mr. Ashmore.*) They have lost more than that, but then if you come to the average dividend for the last three years that would hit them rather hard.

(*Mr. Karl Schauer.*) From a business point of view that is nothing to do with it. We help you to ascertain the *bonâ-fide* shareholders.

(*Mr. Ashmore.*) Yes, I do not want to minimise the assistance which the shareholders of Austria and Germany have rendered.

(*Baron von Eckhardstein.*) Of course, with the Dutch we have nothing to do. The German Government only supports the German shareholders. We have nothing to do with the Dutch or the French or anyone except the Austrians. The Austrians are in it because the Austrians got all their shares from Warschauer and Co. They issued the shares not only in Berlin, but also indirectly in Vienna.

(*Mr. Ashmore.*) Did the issuing firm to which you allude exercise any control over the Board in Amsterdam.

(*Mr. Karl Schauer.*) No, that is impossible. You might as well say they ought to exercise some control over companies in Russia. I know quite well what you mean—you mean whether they could not delegate somebody on the Board.

(*Mr. Ashmore.*) They could, by moving the shareholders who had had dealings with them, have exercised a voting power on the Board at Amsterdam, and perhaps have exercised in that way some species of control over the Board.

(*Mr. Karl Schauer.*) The firm in Berlin did not see why they should exercise any control over the company, as there had been no ground for complaining of the management of the railway, and the company paid very handsome dividends and the shareholders were always satisfied.

(*Chairman.*) You cannot have it both ways. Either you have got control of the company in which you are a shareholder or you have not. If you have got control you are responsible for it, and if you have not you take your chance.

(*Mr. Karl Schauer.*) In this case they have taken their chance.

(*Chairman.*) I am speaking of strict rights, and I am not saying a word about the case for consideration you present, but as far as rights are concerned a shareholder is responsible to third parties for the wrong doing of his directors. There cannot be any question about that. I understand your case is that these shareholders paid a good price, purchased perfectly *bonâ-fide*, believed that there was no risk from an investment of this kind whatever, had never been put on inquiry as to the possibility of misbehaviour out in the Transvaal, and did not hear of it, and could not control it when it took place.

(*Mr. Karl Schauer.*) Quite right, and then they had no time to protest.

(*Chairman.*) When they did find out the misconduct which had taken place they did the best they could to mitigate the results of it to the British Government.

(*Mr. Karl Schauer.*) Yes.

(*Chairman.*) And on that ground you ask for consideration?

(*Mr. Karl Schauer.*) Yes, quite right, that is what we do.

(*Chairman.*) That is the substance of it, is it not?

(*Mr. Karl Schauer.*) Yes, that is the substance of it, and it is laid down like that, as you see in the report.

(*Baron von Eckhardstein.*) I do not know whether Austria has anything to say.

(*Count Berchtold.*) I think we have been in communication with you through the Foreign Office up to now. I think you received our communication. We were informed on the 1st February that the Committee were ready to receive any statements of Austrian or Hungarian shareholders, and they asked if the statements could be sent here by the 15th February.

(*Chairman.*) Yes.

(*Count Berchtold.*) We only received that on the 1st February, so it could not be in the hands of the interested parties before now, and the Austrian Ambassador has directed me to ask you if it could be postponed for a fortnight, if you could extend the date.

(*Chairman.*) Certainly, we will do so, but we rather understand that your case will be very much covered by the case of the German shareholders.

(*Count Berchtold.*) Yes. Of course it is our own interest to make our case as quickly as possible, but we had to inform our Government about it at the beginning of the month, and the Government and the interested parties have lost several days—a week or two—so up to now they were not able to send the statements here.

(*Chairman.*) Certainly, by all means we will accede to what you ask.

(*Baron von Eckhardstein.*) I will send you in the list to-day of the 6,836 shares. You will have it to-morrow.

(*Chairman.*) That will be quite convenient. That includes both the German and the Austrian shareholders.

(*Count Berchtold.*) The Austrian shares are all *bonâ-fide*.

(*Baron von Eckhardstein.*) Only absolutely proved *bonâ-fide* shares are in this list, both Austrian and German.

(*Mr. Karl Schauer.*) I understand some might have been forgotten.

(*Count Berchtold.*) Yes, some might have been forgotten.

(*Baron von Eckhardstein.*) Some may have been forgotten, but all that are in the list are *bonâ-fide*.

(*Chairman.*) I think very likely the matter of detail will be held over till afterwards. The verification will be a matter of detail afterwards. You will give us all you can upon that. You will give us the list of the shareholders.

END OF EVIDENCE.

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